Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES J. REYNOLDS
PETITIONER
V.
CITY OF NEW YORK
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether during what the petitioner claims was a multi-decade punitive investigation, New York City's alleged conduct satisfies the criteria for invoking the jurisdiction of the federal courts under 28 U.S.C. § 1331.
2. Whether the conduct that the City of New York is alleged to have engaged in can fairly be characterized as an insurrection under 10 U.S.C. § 333 (1).
3. Whether the city's alleged activity is a Racketeer Influenced Corrupt Organization (RICO) conspiracy under 18 U.S.C. § 1961.
4. Whether the alleged conduct of the municipality in question constitutes a policy or custom sufficient to sustain a claim for relief under 42 U.S.C. § 1983.
5. Whether six incidents occurring in New York City out of a total of nine events giving rise to the claim is a substantial enough portion to make the Southern District of New York the correct venue under 28 U.S.C. § 1391(b).
6. Whether the alleged incidents unfolded between roughly mid-August 1980 and August 2004, or November 25, 1985 and June 2001, affecting timeliness under N.Y.C.P.L. § 214.
7. Whether the Federal Bureau of Investigation should be enjoined from withholding records from the petitioner, since the district court ruled *sua sponte* on the Freedom of Information Act request, even though the petitioner did not seek judicial review of the matter in the lower courts.
8. Whether petitioner and others similarly situated are entitled to injunctive relief.

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Mr. James Reynolds respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINION BELOW

There was no appeals court opinion, and the opinion of the district court, App. 21a-27a, is not reported.

JURISDICTION

The summary order affirming the District Court's opinion was entered on January 17, 2007, and the order denying the petition for rehearing *en banc* was entered on June 12, 2007. APP. 39a-43a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

For the relevant constitutional and statutory provisions, see App. FF, *infra*.

STATEMENT

On August 16, 2004 Mr. James Reynolds filed a complaint by paying the fee and dropping it off in the overnight drop in the United States District Court for the Southern District of New York at 500 Pearl Street, New York, NY 10007, invoking the jurisdiction of the district court under 28 U.S.C. § 1331 because the action arose under the Constitution and laws of the United States. The *Pro Se* clerk's office acknowledged receiving it on August 17, 2004 in a letter dated August 20, 2004. App. 16a. The petitioner did not receive back any documents needed for serving process, so he never effected service on the defendant, as described in *A Manual for Pro Se Litigants Appearing Before the United States District Court for the Southern District of New York*.[1] Repeated attempts to determine the status of the case proved fruitless, too. App. 17a. In early 2005 he

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[1] Elizabeth Ann Etkind and Lois Bloom, District Executive's Office, United States District Court, Southern District of New York, *A Manual for Pro Se Litigants Appearing Before the United States District Court for the Southern District of New York* 42 (1993).

received: (1) a civil judgment, dated "FEB X 4, 2005"; (2) an order of dismissal, dated "FEB X 4, 2005"; and (3) a letter sent under the name of the clerk of the court, J. Michael McMahon through the *Pro Se* Office of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Court House, 500 Pearl Street, Room 230, New York, New York 10007 with instructions for filing a notice of appeal, which the plaintiff followed, actually filing the notice on March 14, 2005. App. 18a-28a. The petitioner, however, did not effect service of the notice of appeal on the defendant; yet nobody in the *Pro Se* clerk's office said anything about a requirement to do so.

The petitioner then received "APPEAL SCHEDULING ORDER #1," dated May 16, 2006, calling for him to serve and file a brief with the United States Court of Appeals for the Second Circuit by June 15, 2006. App. 29a-30a. Reynolds then petitioned for and received a thirty-day extension to file his brief. App. 31a-32a. The second Appeal scheduling order, required Reynolds to serve and file the brief by July 24, 2006, App. 34a-35a, which he did; however, the defendant did not file a brief. App. 35a.

When he received a notice scheduling a hearing for January 11, 2006, Reynolds filled out the applicable portions and returned the form to the clerk's office, assuming there was a typographical error, and the date was January 11, 2007. App. 36a-37a. He then submitted a request and received permission to waive oral arguments. App. 38a. After receiving the order from the three-judge panel of the Appeals Court – consisting of Second Circuit Judges Ralph K. Winter, Jose A. Cabranes, and Chief District Judge for the Eastern District of New York, Edward R, Korman – affirming the lower court's decision, filed January 17, 2007, App. 39a-41a, Reynolds petitioned for a rehearing *en banc*, which the appeals court denied in an order filed June 12, 2007. App. 42a-43a.

1. In the United Sates Court for the Southern District of New York, the petitioner claimed that New York City deliberately targeted him in a multi-decade punitive investigation between roughly mid-August 1980 and August 2004. He went on to assert that the investigation unfolded in New York City, Fort Benning and its surrounding communities in Georgia, as well as Fort Campbell and the surrounding communities in Kentucky and Tennessee,[2] employing as castigation methods assault, 18 U.S.C. § 113 (a) (4); U.S. Const. amend. XIV § 1; subversion directed against the United States Army, 18 U.S.C. § 2387; attempts to entrap for their own sake, U.S. Const. amend. XIV § 1; entrapment endeavors in retaliation for the petitioner having made Freedom of Information Act (FOIA) requests that report serious crimes, 18 U.S.C. § 1513[3]; U.S. Const. amend. XIV § 1; efforts to execute what amounts to a letter of reprisal, U.S Const. art. 1 § 10, implicitly making the petitioner less than free, denying him due process and equal protection of the law; and, in that they systematically deprived him of rights "named in the Constitution and secured by law," 10 U.S.C. § 333 (1), constitute essentially an insurrection. 18 U.S.C. § 2387; U.S. Const. amend. XIV § 1. The United States Court of Appeals for the Second Circuit (USCASC) affirmed on appeal, App. 40a-44a, the ruling by the United States District Court for the Southern District of New York (USDCSDNY) that Reynolds' complaint, [e]ven when liberally construed," (citing *Haines v. Kerner,* 404 U.S. 520-21 (1972), failed to allege "facts sufficient to demonstrate that plaintiff's injury was caused by

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[2] During thirteen years of Army service from 1985 to 1998, the petitioner was also assigned to Fort Sill, OK, Fort Gordon, GA; Camp Coiner, Republic of Korea; Fort Hood, TX; Fort Leavenworth, KS; and Camp Stanley, Republic of Korea. If the case were to continue to trial, discovery would likely reveal that the investigation unfolded in those locations, too.

[3] This cited the wrong statute in the complaint and the appeal brief.

any policy or custom of this municipal defendant." (Citing *Bd. of County Comm'rs of Bryan County, Okl. v. Brown,* 520 U.S. 397 (1997) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978)); and, *Sarus v. Rotundo,* 831 F.2d 397, 400 (2d Cir. 1987). App. 21a-22a.

The appeals court also upheld the District Court's ruling that the complaint was "untimely," not having been "commenced within three years of the alleged violation." (Citing *Owens v. Okure,* 488 U.S. 235 (1989); *Wilson v. Garcia,* 471 U.S. 261 (1985); N.Y. C.P.L.R. § 214 (McKinney 2005). Dismissing the claim on its face, the District Court, relying on *Pino v. Ryan,* 49 F.3d 51, 53 (2d Cir. 1995) (citation omitted), App. 22a, rejected the claim that the incidents were part of the same punitive investigation and insurrection, implying they were separate unrelated acts that occurred between November 25, 1985 and June 2001, App. 22a-23a, not between roughly mid-August 1980 and August 2004, as Reynolds asserted. While Reynolds contended that the action arose under the Constitution and laws of the United States, The Second Circuit Court of Appeals affirmed the lower Court's dismissal for lack of federal question jurisdiction and its statement, App. 25a, that:

> Plaintiff's claims do not provide a basis for federal jurisdiction under 28 U.S.C. §1331. To invoke federal question jurisdiction, the plaintiff's claim(s) must arise "under the Constitution, laws, or treaties of the United States." 28 U.S.C. §1331. "Federal question jurisdiction may be properly invoked only if the plaintiff's complaint necessarily draws into question the interpretation or application of federal law." *State of New York v. White,* 528 F.2d 336, 338 (2d Cir. 1975). Where, as here, the plaintiff's constitutional claim appears to be nothing more than a state court claim "recloaked in constitutional garb," the constitutional claim is insufficient to confer jurisdiction. *Anderson v. Bowen,* 881 F.2d 1, 5 n.10 (2d

Cir. 1989) (quoting *Hagans v. Lavine*, 415 U.S. 528, 53637 (1974)).

2. The petitioner alleged that on or about mid-August 1980 Christopher Dixon, brought to his house John Doe, who – Reynolds would later learn from Dixon – had recently been released from a British prison in Northern Ireland for Irish Republican Army-related activities. Reynolds claimed the purpose was to create misleading visual information to support labeling him a terrorist and justify denying him liberty via a punitive investigation, eliminating the inconvenience of due process of law. U.S. Const. amend. XIV § 1. It is not readily apparent to the petitioner that the district court addressed this claim directly. Nevertheless, the Appeals Court affirmed the decision. App. 39a-43a.

3. A fellow Second Lieutenant; room mate in Columbus, GA; and classmate of the petitioner attending the Infantry Officer Basic Course (IOBC) at Fort Benning, GA, at the time; 2LT Peter Ehrlenbach, who said he was a Police Officer in New York City, assaulted the petitioner on or about November 25, 1985 inside a Columbus, GA restaurant 18 U.S.C. § 113 (5). The purpose, according to Reynolds, was to provoke a fight and get the petitioner kicked out of the Army. Insofar as the purpose was punitive, both physically and financially, it had the functionally equivalent aim of a letter of reprisal, if not bill of attainder. U.S. Const. amend. XIV § 1; U.S. Const. art. I § 10 (1). The appeals court affirmed the circuit court's dismissal and decision not "to transfer the allegations regarding the assault which occurred in Columbus, Georgia" to the Southern District of New York App. 39a-43a, 23a.

4. Alleging an act of retaliation for giving a sworn statement against Peter Ehrlenbach during the investigation that followed the altercation with Ehrlenbach, ¶ 3, *supra*, and subversion, 18 U.S.C. § 2387, the petitioner claims then 2LT Russell Attanasio – also a classmate in the IOBC and US Army Ranger School, who said he was a Police Officer in

New York City – on or about March 5, 1986, disseminated false derogatory information to the cadre and students in their Ranger School class in order to get Reynolds two negative peer-evaluations that would result in his expulsion from the course. *id.* § 1513 (e); *id.* § 1961 (1) (B).[4] The District Court does not appear to have addressed directly any of the retaliation or subversion allegations; however, the Appeals Court affirmed that decision. App. 21a-27a, 39a-43a.

5. In another punishment-denial-of-liberty-and-reprisal-via-efforts-to-entrap allegation, the petitioner claims that Christopher Dixon on or about December 27, 1994, under the direction of New York City officials,[5] along with John Doe 1 a bar in the Bronx, NY and John Doe 2 (the bartender) staged a scenario to provoke Reynolds into a fight with John Doe 1 to get him arrested as well as kicked out of the Army.[6] U.S. Const. amend. XIV § 1; *id.* art. I § 10 (1). Though it is not readily apparent to the petitioner that the district court addressed this claim directly, the Appeals Court affirmed its decision. App. 40a-44a.

6. In an allegation of subversion, the petitioner claims on or about mid-July 1997 New York City was responsible for

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[4] Petitioner mistakenly cited provisions of 18 U.S.C. § 1512, not 18 U.S.C. § 1513 in the complaint, and made no reference to 18 U.S.C. § 1961.

[5] Earlier that same night Dixon and I were in the bar of the American Turners NY Inc., 748 Clarence Ave. Bronx, NY, where I was introduced to a Mr. Schepis, then an Assistant Bronx County District Attorney, whose brother, Scott Schepis was in the same grade as me in Saint Benedict grammar school.

[6] I would now contend – though I did not in the original complaint – this, as well as the other efforts to entrap me after 1992, were at least partially meant to retaliate against me for giving a sworn statement to federal authorities complaining about a foreign government's espionage activities. 18 U.S.C. § 951; *id.* § 1513 (e); *id.* § 1961 (1) (B); App. 40a, ¶ 10).

disseminating information to his subordinates that he was a homosexual; as a result, one of whom, Sergeant First Class (SFC) John Doe,[7] Reynolds' immediate subordinate and chief for the communications section of the 101st Aviation (AVN) Brigade (BDE), 101st Airborne Division (Air Assault), Fort Campbell, KY insinuated in front of a crowd of soldiers in the personnel office of the BDE Headquarters (HQ) of the 101st AVN BDE – that Reynolds was a homosexual,[8] undermining his authority as the officer in charge of the section for the remainder of the time he served in that capacity.[9] 18 U.S.C. § 2387; *id.* § 1513 (e); *id.* § 1961

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[7] His last name is Gilmore, and he retired shortly after the incident described here.

[8] Whether gays should serve in the military, or whether being gay should undermine somebody's authority or not, is irrelevant. What is relevant is that in the Army of 1997, being labeled as gay did undermine my authority with my subordinates.

[9] That my authority had been undermined seemed especially evident during a rotation to the National Training Center (NTC) at Fort Irwin, CA during the fall of 1997 when my soldiers repeatedly failed to follow my instructions to establish a functioning planning and tracking cell within the Command Post (CP), believing that not to be their job. Even though that was my fourth deployment to the NTC in the previous five-and-a-half years, and I knew brigade or battalion-level communications section should function in a tactical environment. The impression I received from my subordinates was: How could somebody who is gay know tactical communications? They would listen to my instructions, register their objection and then, indicate they would follow them, after I told them the instructions did not change. Since during operations, I was in a helicopter, I could not directly supervise my subordinates in the ground CP. After each mission, the Observer Controller (OC) – a Captain who was from Guam – invariably pointed out to the soldiers during after action reviews what they ought to have done, and it verified the tactical and technical soundness of my previous instructions, which they had failed to follow. Even though I was the Brigade Signal Officer, however, there was a reluctance to be assertive, given what I experienced in late-winter, early spring 1997 while I was stationed in the Republic of Korea. App. 42a-43a. The fact that so many officers in the Brigade HQ's

(1) (B). It is not certain, though this allegation is probably what the court was referring to as "describing 'fantastical or delusional scenarios'" that alone justified dismissing the claim even though *pro se* litigants should be granted more leeway than those represented by attorneys. (Citing *Platsky v. Armand,* No. CV-93-5154, 1994 WL 681415, at *7 (E.D.N.Y. Feb. 8, 1994)). App. 26a.

7. In another retaliate-by-trying-to-entrap-for-reporting-serious-crimes-in-FOIA-requests allegation, the petitioner asserted that during the night on or about July 14, 2000 Christopher Dixon and Kevin Kennedy came to his brother's house – where he was staying after moving back from Clarksville, TN – and invited him to go out drinking. When Reynolds asked Dixon if his purpose was to entrap him, Dixon answered yes, so the petitioner stayed home that night.[10] 18 U.S.C. § 1512 (d) (2); *id.* (f); *id.* § 1961 (1) (B).[11] It is not clear whether this is one of the allegations the court referred to when dismissing the case as frivolous or not. App. 26a-27a.

8. In two allegations, the petitioner asserted that New York City attempted to execute a letter of reprisal by interfering with his mail by: (1) on or about February 23, 2001, having a follow-up cover sheet to a faxed résumé he sent to an employment recruiting firm returned marked "RTN TO SENDER=UNABLE TO FORWARD," U.S. Const. art. I § 10 (1); 18 U.S.C. § 1701; *id.* § 1702; *id.* § 1513 (e); *id.* §

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displayed photos in their work area of themselves posing with the then President of the United States and/or the First Lady made me a little gun-shy, too. This was unusual. I had worked in only one other place during my Army service where somebody displayed a photo of themselves posing with the President of the US; that was Fort Benning, GA, and it was the Chief of Protocol posing with Gerald Ford during a visit he made there about 15 years prior.

[10] See note 6, *supra,* too.

[11] This was incorrectly cited in the complaint.

1961 (1) (B); App. 12a; and (2) on or about March 7, 2001 having a résumé he mailed to the same employment recruiting firm returned marked "RETURN TO SENDER UNABLE TO FORWARD." *U.S. Const. art. I § 10 (1); 18* U.S.C. § 1701; *id.* § 1702; *id.* § 1513 (e); *id.* § 1961 (1) (B); App. 13a.[12] It is not clear to the petitioner, as a non-lawyer, where the District Court addressed the tampering-with-the-mail to execute a letter of reprisal allegations. App. 21a-27a. The appeals court affirmed the decision, though. App. 39a-43a.

9. The petitioner also claimed that between about December 2003 and August 2004 New York City forced him (while he attended Herbert H. Lehman College of the City University Of New York) to have to negotiate an obstacle belt of trickery that other students did not have to while applying for entitlements: federal student loans, U.S. Const. amend. XIV § 1; 20 U.S.C. § 1087 (b) (2); *id.* § 1091; App. 59a-64a, and education benefits under the US Department of Veterans Affairs' (VA) Montgomery GI Bill (MGIB), 30 U.S.C. § 3011. App. 55a-57a. According to Reynolds, the objective was to complicate the process in order to increase the likelihood he would make a mistake that could be interpreted as a crime in retaliation for reporting crimes in FOIA requests.[13] 18 U.S.C. § 1513 (e); *id.* § 1961 (1) (B). Once the petitioner discovered the problems with both his student loans[14] and his MGIB entitlement,[15] it took a

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[12] Wrong citations in the complaint.

[13] See note 6, *supra*, too.

[14] On or about March 5, 2004 I went to the financial aid office at Lehman College, to verify that the amount of my student loan, which included money for the fall 2003 semester, was the correct amount. I told the financial aid folks (Mr. Hill and Jane Doe 1) at Lehman that I was non-matriculated in the fall 2003 semester, and made a verbal request for an exception to policy during the long discussions I had with them in November and December of 2003, arguing that since 9 of the credits

significant amount of time and inconvenience to remedy the errors. It is not clear to the petitioner where the District Court addressed this claim. App. 21a-27a.

10. Another petitioner claim was that New York City used harassment and humiliation as retaliatory and castigatory vehicles, U.S. Const. amend. XIV § 1; 18 USC § 1513 (e), deliberately wasting his time over a period of about three years, between June 2001 when he took what he believed to be the written exam to become a police officer and June 2004 when he received a letter from somebody at the candidate service desk of the New York City Police Department, saying he was disqualified as a result of the "Background

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would count toward my MA, I ought to get any financial aid I would otherwise be entitled to. Every form I filled out emphasized my non-matriculated status where appropriate. So when I received loans that appeared to cover the fall 2003 as well as spring 2004 semesters, the assumption was the exception to policy was granted. When I went to double check at the financial aid office, Mr. Hill and Jane Doe 1 said it was not so, so I had to return the money. This was a deliberate effort to get me to take more than I was entitled to with the hope of charging me with a crime for having done so, and it was a nuisance.

[15] I explained to Jane Doe 2 in the registrar's office, which handles the processing for entitlements under the Montgomery GI Bill at Lehman College, that even though I was taking twelve credits in the fall 2003 semester, only 9 would count toward the MA degree. I told her this believing it mattered whether credits counted toward a degree where the MGIB was concerned. I thought I would receive benefits at the three-quarters level. With the MGIB, non-matriculated status did not matter, as long as the courses' credits would count toward a degree. I nevertheless received benefits at the full-time rate and immediately notified the women who handled MGIB entitlements in the registrar's office, so I could return the excess amount. This subjected me to a threatening letter from the Department of Veteran's Affairs, even though I was the one who pointed out the error that the person processing the benefits claim and the deductions would be taken automatically out of my next-semester entitlement. This was another deliberate effort to get me to take more than I was entitled to with the hope of charging me with a crime for having done so, and it too was a nuisance.

Investigation/Character" with a block labeled "other" checked and a vague reference to what he assumes were answers he gave on some forms during the pre-screening. Reynolds further alleged, though probably not as clearly as he ought to have, that since the police department never intended to hire him, making him go through the process – which included traveling to different locations in the Bronx for the exam, Brooklyn to locate his supposed assigned investigator, Queens in December 2001 for a pre-screening/medical exam, and the Police Academy in Manhattan literally to run an obstacle course in the late-December 2001/January 2002 timeframe – was a way of punishing while investigating, implicitly denying liberty without affording due process or equal protection of the law in retaliation for reporting crimes in FOIA requests.[16] U.S. Const. amend. XIV § 1; 18 USC § 1513 (e); App. 14a-15a. There appears to be legal nuance in the District Court's decision concerning this claim that the petitioner, as a non-lawyer, might not accurately understand. For example, stating that "[t]he incidents upon which plaintiff's complaint is based occurred between November 25, 1985 and June 2001," with June 2001 presumably referring to when the police department application process began, App. 22a, seems to suggest the Court recognized there might be a federal question there; but, instead of the process concluding in June 2004 with the notice of disqualification at the end, as Reynolds alleged; federal question jurisdiction expired when Reynolds completed the exam at the beginning of the application process. Accordingly, the Court dismissed the case as untimely. (Citing "*Pino v. Ryan,* 49 F.3d 51, 53 (2d Cir. 1995) (citation omitted) (a defense that appears on the

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[16] See note 6, *supra,* too. Also, there was no mention in the complaint of the trips to Queens in December 2001, Brooklyn, or Manhattan in late-December 2001-early-January 2002 in the complaint. However, permitting this *pro se* plaintiff to remedy the defects would have brought them to light.

face of the complaint may be the basis for a dismissal under 28 U.S.C. § 1915(d)). *See also Baker v. Cuomo,* 58 F.3d 814, 818-19 (2d Cir. 1995) (a *sua sponte* dismissal is 'appropriate if it appears from the face of the complaint that the action is barred ... by the expiration of the statute of limitations')"). App.23a. However, it remains unclear if the Court was referring to the incidents Reynolds alleged happened during the rest of the application process after June 2001 in dismissing the case for lack of federal question jurisdiction with the statement: "With respect to plaintiff's claims which appear to have occurred within the three-year statute of limitations, plaintiff is advised that the subject matter jurisdiction of the federal district courts is limited and is set forth generally in 28 U.S.C. §§ 1331 and 1332." App. 24a. Thus the petitioner does not fully grasp the district court's decision or the appeals court's affirmation concerning this claim.

11. Implicit in the petitioner's contentions is since: (1) six of the allegations giving rise to the complaint occurred in New York City, ¶¶ 2,5,7-10, *supra*; (2) two occurred on or around Fort Benning and Columbus, GA, ¶¶ 3 & 4, *supra*; and (3) one took place on or around Fort Campbell, KY and the surrounding communities in TN and KY ¶ 6, *supra*; the Southern District of New York was the correct venue for the action because it is "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b) (2). The 2d Circuit, however, affirmed the District Court, which disagreed with Reynolds and decided: (1) to dismiss the case for having only one incident, *supra* ¶ 3, that, while it was a federal question, occurred in Columbus, GA and was therefore filed in the wrong district; and (2) not to transfer it to the Southern District of New York. 28 U.S.C. § 1391(b); *id.* § 1406(a); App. 23a.

12. Regarding Freedom of Information Act (FOIA) requests, the petitioner did not seek judicial review of FOIA

request denials by US government agencies in this case. App. 1a-11a. Nevertheless, the district court ruled *sua sponte* in dismissing the complaint on FOIA grounds.[17] (Citing *Morpurgo v. Board of Higher Education in City of New York*, 423 F. Supp. 704, 715 n.26 (S.D.N.Y. 1976); 28 C.F.R. § 16.9(a) (2005); 28 C.F.R. § 16.9(c) (2005); App. 24a-25a. 13. The petitioner sought $1 billion,[18] not knowing whether to call them damages or what. He also sought preliminary injunctive relief from being labeled and treated as a terrorist by any government agency or individual, local state or federal, and to have his otherwise constitutionally protected liberties restored. The district court ruled and the appeals court affirmed that the petitioner presented no issues of arguable merit that might warrant permitting the *pro se* plaintiff to correct errors to a fee-paid complaint before dismissing a complaint *sua sponte, citing Hughes v. Albany*, 76 F.3d 53 (2d Cir. 1996). Since, according to the district court, the complaint was frivolous, it denied the request for injunctive relief as moot. Citing 28 U.S.C. § 1915 (e)(2)(B)(ii). The court also certified that, although Reynolds paid the filing fee to bring the action, any appeal would not be taken in good faith. Citing 28 U.S.C. § 1915(a)(3); and *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962); App. 21a-27a, 39a-43a.

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[17] I am seeking judicial review in a lower court, *Reynolds v. United States, and the City of New York*, No. 06-CV-843 (U.S.C.S.D.N.Y., filed Feb 2, 2006) concerning the FOIA request to the National Archives and Records Administration (NARA) contained *infra* at App. 50a-54a. Please do not rule on this matter; nor, please, should you interpret my inclusion of documents from that case as an effort to do an end run around the district court. To the extent that FOIA requests appear in the appendices below, since they are sworn statements that have already been made, the petitioner's intent is for them to support assertions in this petition without having to make new sworn statements and not to short-circuit the judicial process.

[18] The assumption is that would be after taxes.

REASONS FOR GRANTING THE PETITION

1. The matter that is potentially the most important – because it could affect the most people, and do so in secret – appears the least so on its face. It stems from the district court's *sua sponte* decision to rule on the FOIA matter. The petitioner would seek to enjoin the Federal Bureau of Investigation from withholding information that would be responsive to his FOIA requests from 1998 and 1999. *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. ___, ___, n. 8 (1991); App.1a-11a. The importance of the issue depends on the extent to which any court order prevents the release of information that would otherwise be a responsive record to the requests; or, more specifically, it hinges on the nature of the court(s) from whence the order(s) may have emanated: (1) Article III courts; (2) other courts, such as courts martial, or military commissions; or (3) any secret courts in the legislative branch – Star Chambers – that "the Congress may" have "ordain[ed] and establish[ed]," U.S. Const. art. III § 1, perhaps relying also on the "necessary and proper," and "general welfare" clauses for justification.[19] *Id.*. art. I § 8. To the extent Star Chambers exist, this court should declare them and any of their rulings unconstitutional, assuming the United States Supreme Court has not already upheld their constitutionality. In that case, this Court should make their existence and composition public, so the American people might decide whether to amend the

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[19] I contend that the Omnibus Budget Reconciliation Act of 1981 was a bill of attainder against me because it specifically targeted people who were: (1) born in 1962; (2) had attained the age of 19 when the law took effect; (3) received Social Security benefits while in high school before graduating in 1980 or earlier; (4) took time off before beginning postsecondary school in September 1981 or later during the 1981 academic year; (5) received Social Security benefits between September 1981 and August 1982; and (6) had those benefits terminated completely in August 1982 instead of having them phased out because of the Omnibus Budget Reconciliation Act of 1981. I fit into this very narrowly defined category; indeed, I may be the only person who does.

Constitution to abolish them or not. It would appear that in our system of checks and balances, the principle check on the legislative branch comes from the voters whom the legislators represent. Congress rightly has oversight over the executive and judicial branches. Who watches Congress? There is judicial review, but not if secret legislative courts have already been ruled constitutional. A free people are all that remain. In order to supervise their elected representatives responsibly, voters need to know what their representatives are doing. They cannot do that when legislators are establishing organizations, whose very existence is a secret and which may exercise life-or-death power over individuals who (1) are being judged in secret – with who knows what constitutional protections – and (2) may never know such power is being exercised over them. If having Star Chambers is such a good idea, Congressmen/women should have to explain why to their constituents and let them decide.

2. The extent to which what is asserted by the petitioner, App. 46a ¶ 11, may have been the result of a chemical or biological agent attack, 18 U.S.C. § 229 (a) (1); *id.* § 175 (a), in retaliation for allegations complaining about a foreign government's espionage, mentioned in App. 46a ¶ 10, the extent to which New York City may have been involved might be worth examining. *Id.* § 1513 (e); *id.* § 1961 (1) (B).

3. The extent of New York City involvement in what the petitioner believes may have been a car bombing attempt in retaliation for his sending an email to the Chairman of the Senate Intelligence Committee, *id.* § 1512; *id.* § 1961 (1) (B); App. 49a-53a, 54a, might also be a point worth examining.

4. The allegations in the complaint seem to have arisen almost exclusively under the Constitution and laws of the United States, supports Reynolds's effort to invoke the authority of the district court under 28 U.S.C. § 1331. Therefore, unless there is something the petitioner, as a non-lawyer, does not understand, and given the arguable

importance of the issues at hand, this would appear to be an instance justifying summary disposition on the merits under Supreme Court Rule 16.1.

5. Six of the allegations giving rise to the complaint occurred in New York City, see Statement of the Case, ¶¶ 2, 5, 7-10, *supra*. That would appear to make the Southern District of New York the correct venue for the action because it is "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." *Id.* § 1391(b) (2). It is not clear what more there is to say about the matter, except it supports granting the petition.

6. There is a great deal of reluctance – again as a non-lawyer, and especially since this is a petition to the United States Supreme Court – even suggesting that a municipality's actions might constitute a RICO conspiracy, 18 U.S.C § 1961 (1) (B). The petitioner is a graduate student in US history and fully understands what that means; however, he has presented his understanding of what has happened and feels uneasy even having to request a petition, but urges the Court to grant one anyway.

7. With continued hesitance, the petitioner is unable to imagine how incidents such as those as have been alleged, given the locations and timeframe, could possibly have occurred absent a policy or custom of a municipality. 28 U.S.C. § 1983. Would not a multi-decade endeavor of any sort involve a significant amount of deliberation by New York City government officials? It likely would entail tracking the petitioner and dispatching investigators to his location, requiring resources and people, which could become expensive over the decades. This would require approval from officials with budgetary responsibilities. If investigators were to go undercover inside the military, for instance, it also might require arranging for city officials in the reserve components of the military to be called to active duty. This would require coordination with the Army and perhaps other federal agencies. City bosses would need to

approve letting investigators be away from their New York City jobs for extended periods and/or continuing to pay salaries. The list of official decisions potentially required is too long to list here, but what has been listed supports granting the petitioner's request.

8. If by "[t]he incidents upon which plaintiff's complaint is based occurred between November 25, 1985 and June 2001," App. 23a, means the June 2001 incident is taking the exam to become a police officer, why are not (1) going to Queens in December 2001 for what was called a pre-screening/medical exam, and the assignment of an investigator, (2) traveling to the Police Academy in Manhattan literally to run an obstacle course in the late-December 2001/January 2002 timeframe, (3) going to Brooklyn months after December trying to meet his supposed investigator, and (4) sending correspondence in June 2004 incidents giving rise to the complaint? U.S. Const. amend. XIV § 1; 18 USC § 1513 (e); App. 14a-15a. All these things took place as part of the same process, so it is not clear how timeliness, N.Y.C.P.L. § 214, is even an issue. Moreover, once the allegations concerning federal education entitlements are taken into consideration, timeliness seems to be less disputable, justifying getting a petition as well.

9. The matter of insurrection 18 U.S.C. § 2383 – especially when it involves subversion, *id.* § 2387 – would appear to be serious. Moreover, if an individual within a state is included in "any part or class of its people … deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law," 10 U.S.C. § 333 (1), then there might be good reason for this Court to grant the petition, if not a summary disposition on the merits in favor of the petitioner. U.S. Const. amend. XIV § 1.

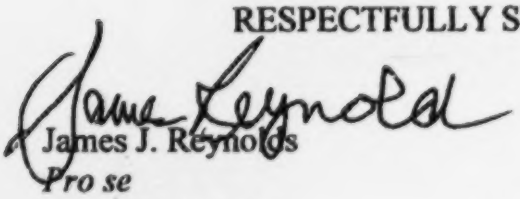
10. Finally, the petitioner also asks the Court to grant injunctive relief from being labeled and treated as a terrorist by any government agency or individual, local state or federal, and to have his otherwise constitutionally protected

liberties restored. Does not taking an oath of loyalty mean anything anymore?

CONCLUSION

Wherefore, the petitioner respectfully requests that the Court grant the petition, as well as such other and further relief as may be just and proper.

RESPECTFULLY SUBMITTED,



James J. Reynolds
Pro se
820 Edison Ave
Bronx, NY 10465
(718) 829-3817

July 16, 2007

APPENDIX A: LETTER FROM FBI'S NYC OFFICE RESPONDING TO FOIA REQUEST

4-970 (8-19-96)

U.S. Department of Justice
Federal Bureau of Investigation
26 Federal P l a z a
New York. New York 1O278

Mr. James Reynolds
3L09 Whitetail Drive
C l a r k s v i l l e, Tennessee 37043

March 16, 1 9 9 8

Dear Requester:

Your letter asking for records maintained by the FBI concerning yourself is being returned to you. It did not contain all of the items and background information needed by the FBI in order to conduct an accurate search of FBI records. Please provide the following information.

Your Complete Name: _____.
First Middle Last
Your Current Address: _____.
Number Street
_____.
City State Zip Code
Your Date of Birth: _____.
Month Day Year
Your Place of Birth: _____.
City State

In addition, we ask that you provide your notarized signature, using the reverse side of this letter or a separate form. In lieu of a notarized signature, you may submit a

declaration pursuant to Title 28, United States Code, Section 1746.

X The notarized signature or declaration you have already provided is sufficient.[20]

The above information is necessary to conduct an accurate search of FBI records, as well as to ensure that documents are released only to an individual with a right of access to the information. Please feel free to provide any additional information, such as previous addresses, employment, alias, etc., which you believe may assist the FBI in locating the information you seek. Furnishing false information will subject a requester to criminal penalties.

Providing your daytime phone number is not required but could assist the FBI's efforts to promptly respond to your request (__) __-____.

Sincerely yours,
LEWIS D. SCHILIRO
Assistant Director in Charge
"s/ James J. Roth"
By: James J. Roth
Chief Division Counsel
All Attached Correspondence Must Be Returned to the FBI with this Letter.

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[20] This form/letter said that what I had sent originally sufficed.

APPENDIX B: FOIA REQUEST TO FBI'S NYC OFFICE

James J Reynolds
SSAN: 104-52-9072
3109 Whitetail Dr.
Clarksville, TN 37043

Department of Justice
Federal Bureau of Investigation
Chief: FOIA/PAO Section, 26 Federal Plaza
New York, NY 10278

This a request under the Freedom of Information Act, 5 U. S.C., Sec. 552. I used to live at 820 Edison Aye, Bronx, NY 10465, and 712 Comstock Ave in Syracuse, NY. I have been in the FBI's counter-intelligence program for a long time, and experienced wholesale destruction of my Constitutional liberties while stationed in the Republic of Korea from MAY 1996-MAY 1997. Since I am a loyal American and have been promoted to Major in the U.S. Army, I am puzzled. My guess is it is because I am ideologically impure.

Since the cointpro involves the trying, convicting, and sentencing of anybody in it without them knowing about it. All that remains is the frame. I am very interested in what schemes were hatched with your informant Steven Deluca to frame me and put me in a cage for the rest of my life. I also want any files you have on me in New York, and Syracuse (does the name Pete Green ring a bell?). That crap about sources and methods is not going to wash, either. I am prepared to go Federal Court to get the info. I know the sources and methods, but I operate within the framework of the U. S. Constitution, due process, and the rule of law. Despite your having declared me to be something less than a citizen who is not entitled to the privileges and immunities afforded in the Constitution, I would submit to you that I do

have constitutional rights. I am also quite sick and tired of having my liberties destroyed in a systematic and wholesale manner. I am tired of having electronic surveillance of me routinely released to the media and private individuals. Where are we, in East Germany!?

I would also like any documentation of efforts to ensure that if the frame worked, that I would be denied adequate legal representation. Would such collusion be in restraint of trade and a violation of anti-trust statutes? The bottom line is give me what you got, or I am going to court to get it.

I am very respectfully yours.

Sincerely,
"s/ James Reynolds"

"s/ Lucas B. Rice," CPT, AVN, ADJ
My Comm. Expires Indef.
IAW Title 10 U.S.C. § 1044a inside a
raised seal that reads: "U.S. Armed Forces
AUTH. BY USC 936 NOTARY PUBLIC"

APPENDIX C: LETTER FROM FBI HQ'S RESPONDING TO FOIA REQUEST

OPCA-11 (12-3-96) **U.S. Department of Justice**

Federal Bureau of Investigation
935 Pennsylvania Ave., N.W.
Washington, D.C.20535-0001

Mr. James J. Reynolds
3109 Whitetail Drive
Clarksville, TN 37043

MAR 13 1998

Dear Requester:

Your letter asking for records maintained by the FBI concerning yourself is being returned to you. It did not contain all of the items and background information needed by the FBI in order to conduct an accurate search of FBI records. Please provide the following information.

Your Complete Name: _____.
First Middle Last
Your Current Address: _____.
Number Street
_____.
City State Zip Code
Your Date of Birth: _____.
Month Day Year
Your Place of Birth: _____.
City State

In addition, we ask that you provide your notarized signature, using the reverse side of this letter or a separate form. In lieu of a notarized signature, you may submit a

declaration pursuant to Title 28, United States Code, Section 1746.

X The notarized signature or declaration you have already provided is sufficient.[21]

The above information is necessary to conduct an accurate search of FBI records, as well as to ensure that documents are released only to an individual with a right of access to the information. Please feel free to provide any additional information, such as previous addresses, employment, alias, etc., which you believe may assist the FBI in locating the information you seek. Furnishing false information will subject a requester to criminal penalties.

Providing your daytime phone number is not required but could assist the FBI's efforts to promptly respond to your request (__) __-__.

Sincerely yours,

"s/ J. Kevin O'Brian"
Chief Freedom of Information
Privacy Acts Section
Office of Public and Congressional Affairs

All attached correspondence must be returned to the FBI with this letter.

---

[21] This form/letter said that what I had sent originally sufficed.

APPENDIX D: FOIA REQUEST TO FBI HQ'S

James J Reynolds
SSAN: 104-52-9072
3109 Whitetail Dr.
Clarksville, TN 37043

Department of Justice
Federal Bureau of Investigation
Chief: FOIA/PAO Section, RM 6296 JEH
Washington, DC 20530

Dear Whomever,

This a request under the Freedom of Information Act, 5 U. S.C., Sec. 552. I used to live at 820 Edison Aye, Bronx, NY 10465, and 712 Comstock Ave in Syracuse, NY. I have been in the FBI's counter-intelligence program for a long time, and experienced wholesale destruction of my Constitutional liberties while stationed in the Republic of Korea from MAY 1996-MAY 1997. Since I am a loyal American and have been promoted to Major in the U.S. Army, I am puzzled. My guess is it is because I am ideologically impure.

Since the cointpro involves the trying, convicting, and sentencing of anybody in it without them knowing about it. All that remains is the frame. I am very interested in what schemes were hatched with your informant Steven Deluca to frame me and put me in a cage for the rest of my life. I also want any files you have on me in New York, and Syracuse (does the name Pete Green ring a bell?). That crap about sources and methods is not going to wash, either. I am prepared to go Federal Court to get the info. I know the sources and methods, but I operate within the framework of the U. S. Constitution, due process, and the rule of law. Despite your having declared me to be something less than a

citizen who is not entitled to the privileges and immunities afforded in the Constitution, I would submit to you that I do have constitutional rights. I am also quite sick and tired of having my liberties destroyed in a systematic and wholesale manner. I am tired of having electronic surveillance of me routinely released to the media and private individuals. Where are we, in East Germany!?

I would also like any documentation of efforts to ensure that if the frame worked, that I would be denied adequate legal representation. Would such collusion be in restraint of trade and a violation of anti-trust statutes? The bottom line is give me what you got, or I am going to court to get it.

I am very respectfully yours.

Sincerely,

"s/ James Reynolds"

"s/ Lucas B. Rice," CPT, AVN, ADJ
My Comm. Expires Indef.
IAW Title 10 U.S.C. § 1044a inside a raised seal that reads: "U.S. Armed Forces AUTH. BY USC 936 NOTARY PUBLIC"

APPENDIX E: LETTER FROM FBI'S NYC OFFICE RESPONDING TO SECOND FOIA REQUEST[22]

U.S. Department of Justice

In Reply. Federal Bureau of Investigation
Please Refer to 26 Federal Plaza
File No. **none given** New York, New York 10278 January 11, 1999

Mr. James John Reynolds
3109 Whitetail Drive
Clarksville, TN 37043

:

Dear Mr. Reynolds

This is in response to your Freedom of Information/ Privacy Acts (FOIPA) request received by this office on December 15, 1998.

Based on the information furnished, a search of the automated indices to the central records system maintained in New York located no records responsive to your FOIPA request to indicate that you have ever been of investigatory interest to the FBI. The automated indices is an index to all records created since September l, 1977 in this office.

If you have reason to believe records responsive to your request exist prior to the above date, you will have to request another search. In order to respond to our many requests in a timely manner, our focus is to identify responsive records in the automated indices that are indexed as main files. A main file index record carries the names of subjects of FBI investigations.

Although no main file records responsive to your FOIPA request were located in our automated indices, we are required to inform you that you are entitled to file an administrative appeal if you so desire. Appeals should be directed in writing to the Co-Director, Office of Information and Privacy, U. S. Department of Justice, Suite 570, Flag

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[22] I no longer had a copy of the second FOIA request by the time I filed the complaint.

Building, Washington, D. C. 20530, within 60 days from receipt of this letter. The envelope and the letter should be clearly marked "Information Appeal".

Sincerely yours,
LEWIS D. SCHILIRO
Assistant Director in Charge
"s/ JAMES J. ROTH"
By.
JAMES J. ROTH
Chief Division Counsel

APPENDIX F: JUSTICE DEPARTMENT FOIA APPEAL DECISION

U.S. Department of Justice
Office of Information and Privacy
Telephone: (202) 514-3642 *Washington, DC. 20530*

Stamped "Mar 11, 1999"

Mr. James J. Reynolds
3109 Whitetail Drive
Clarksville, TN 37043

Re: Appeal No. 99-1456
RLH:DAH:NSD

Dear Mr. Reynolds:

You appealed from the action of the New York City Field Office of the Federal Bureau of Investigation on your request for access to records pertaining to yourself.

You were advised by the New York City Field Office on January 11, 1999, that no records responsive to your request could be located in the indices of that Office. It has been determined by my staff that its response was correct. Inasmuch as appeals can be taken only from denials of access to records which exist and can be located in Department of Justice files, I am closing your appeal file in this Office.

If you consider my response to be a denial of your appeal, you may seek judicial review in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, or in the Southern District of New York which is where the search was conducted for the records you seek.

Sincerely,

"s/ Richard L. Huff"
Richard L. Huff
Co-Director

APPENDIX G: ENVELOPE OF FIRST RETURNED JOB-SEARCH CORRESPONDENCE

Return Address:
No Name
820 Edison Ave
Bronx, NY 10465

No price on stamp

Postmarked "BRONX, NY 104
PM 23 FEB 2001"

Addressed to:
Leaders
ATTN: Recruiter
200 Executive Way
Ponte Vedra, FL 32082

Stamped:
"RTN TO SENDER UNABLE TO FORWARD"

APPENDIX H: ENVELOPE OF SECOND RETURNED JOB-SEARCH CORRESPONDENCE

Return Address:
No Name
820 Edison Ave
Bronx, NY 10465

No price on stamp

Postmarked "BRONX, NY 104
PM 8 MAR 2001"

Addressed to:
Leaders
ATTN: Gina
200 Executive Way
Ponte Vedra, FL 32082

Stamped:
"RETURN TO SENDER UNABLE TO FORWARD"

APPENDIX I: NOTICE OF PROPOSED DISQUALIFICATION FROM NYPD

POLICE DEPARTMENT

DATED: JUNE 21, 2004
REPLY BY: JULY 21, 2004

NOTICE OF PROPOSED DISQUALIFICATION

1003-00004. 0
REYNOLDS, JAMES J.
820 EDISON AVENUE
BRONX, NY 10465 Candidate Service Desk
Telephone (718) 972-3120/3121
972-2503/2545

Dear Applicant:

The purpose of this notice is to inform you in writing that you will be disqualified for the position of Police Officer if you do not respond to this notice. The information contained in this notice is important to you; you should read it carefully. 'the reason(s) marked below, apply to you:

☐ 1. Lacked a requirement set forth in the Notice of Examination, as follows:

X 2. Background Investigation/Character:

Fraud
Falsification of official NYC employment document(s)
Omission of pertinent facts
Conviction record
Unsatisfactory prior public employment(s)
Unsatisfactory prior private employment(s)
X Other Abusive Drug Use/ Driving Record

☐ 3. Failed the Physical Ability Test.

If you fail to resolve the problem(s) stated above, you will be disqualified.

If you want to submit proof of your qualifications or explain in writing why you believe you are qualified, send your proof or explanation to the Case Management Unit, 4201 4th Avenue, Brooklyn, NY 11232, by the reply date. The minimum requirements for the position of Police Officer are set forth in the Notice of Examination or class specification for this title. An additional copy can be obtained from the Applications Unit, Department of Citywide Administrative Services, 1 Centre Street, room 1448, New York, NY 10007. If you have any questions, please call the Candidate Service Desk at the above numbers.

"s/ Rafael Pineiro"
Rafael Pineiro
CHIEF OF PERSONNEL

COURTESY • PROFESSIONALISM • RESPECT

APPENDIX J: COMPLAINT FILED ACKNOWLEDGEMENT LETTER

PRO SE OFFICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE
500 PEARL STREET, ROOM 230
NEW YORK, NEW YORK 10007
J. MICHAEL McMAHON
CLERK OF COURT

Date: 8/20/04

Re: Reynolds, James J. *v.* The City of New York, et al.
Dear Litigant:

Please be advised that your papers were received by the *Pro Se* Office on Aug 17, 2004. If there are any problems with your papers, they may be returned to you.
If your papers are in order, they will be processed and assigned a docket number and a judge. You will be notified by mail when this is done. Unless directed by the Court, please DO NOT submit any other papers until you have been assigned a docket number.

If you have any questions regarding these procedures, you many contact this Office by letter or by telephone during our normal business hours, 8:30 a.m. - 5:00 p.m., Monday - Friday (except federal holidays). Please note that we cannot accept collect calls.

Sincerely,
"s/ A. Daniel"
Pro Se Clerk
(212) 805-0175

IMPORTANT NOTE:
YOU MUST IMMEDIATELY NOTIFY THE COURT OF ANY CHANGE OF YOUR ADDRESS BY SUBMITTING A LETTER TO THE *PRO SE* OFFICE OR YOU RISK DISMISSAL OF YOUR CASE.

APPENDIX K: LETTER TO DISTRICT COURT JUDGE

James Reynolds
820 Edison Ave
Bronx, NY 10465
December 26, 2004

Michael B. Mukasey
Chief Judge
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Court House
500 Pearl Street
New York, NY 10007

Dear Sir,

I am writing to find out the status of the complaint I filed with the *Pro Se* Office August 17, 2004 (see enclosed). The two women in the *Pro* Se clerk's office whom I spoke with on two separate occasions told me it was under judicial review with no estimate as to the time it might take before a determination is made or what being under judicial review means. Since I am not a lawyer and have been thus far unsuccessful at getting one, I am concerned that deadlines and/or statutes of limitation will expire as time passes. Furthermore, I am unable to verify with any certainty that my complaint is even being processed and seek assurance that it is. This is the only way I can think of to do this. It is going on five months since I have filed my complaint and there is an uncertainty that I wish to remove, so I would greatly appreciate any word you may have on the status of my complaint.

Sincerely,
"s/ James Reynolds"
James Reynolds
Handwritten on original "This is not a rights waiver."

APPENDIX L: CIVIL JUDGMENT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

James J. Reynolds,)
Plaintiff,)
-against-)
The City of New York,)
Defendant.)
)

CIVIL
JUDGMENT
Three Stamps: Case No.:**"05 CV 1815," "JUDGE MUKASEY,"** and **"U.S.DISTRICT COURT S.D. OF N.Y. FILED FEB X 4, 2005"**
Pursuant to the Order issued FEB X 4 2005 by the Honorable Michael B. Mukasey, Chief Judge, dismissing the complaint, it is, ORDERED, ADJUDGED AND DECREED: That the complaint be and it is hereby dismissed. Fed. R. Civ. P. 12(b)(1) and 12(h)(3); 28 U.S.C. § 1915(e)(2)(B)(ii). I certify pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from the Court's Order would not be taken in good faith. "s/ Michael B. Mukasey"
MICHAEL B. MUKASEY
Chief Judge
Dated: FEB X 4 2005
New York, New York
THIS DOCUMENT WAS ENTERED ON THE DOCKET ON _____.

APPENDIX M: NOTICE FROM CLERK

Pro Se Office
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Daniel Patrick Moynihan United States Court House
500 Pearl Street, Room 230
New York, New York 10007

J. MICHAEL McMAHON
CLERK OF COURT

FEB 16 2005

DATE
Re: Reynolds v. The City of New York, No. 05 CV 1815 (MBM)

Dear Litigant:

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the *Pro Se* Office no later than 60 days from the date of entry of the

judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The filing fee for a notice of appeal is $255.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. No personal checks are accepted.

J. MICHAEL McMAHON
CLERK OF COURT
By "s/ Illegible"
Deputy Clerk

encl.
Rev.1/04

APPENDIX N: ORDER OF DISMISSAL/DECISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

James J. Reynolds,)
Plaintiff,)
-against-)
The City of New York,)
Defendant.)
)

Three stamps:
Case No.:**"05 CV 1815,"** **ORDER**
"JUDGE MUKASEY," **OF DISMISSAL**
and **" U.S. DISTRICT**
COURT S.D. OF N.Y.
FILED FEB X 4, 2005"

Plaintiff, appearing *pro se,* brings the instant action which was received by this Court's *Pro Se* Office on August 17, 2004. In light of plaintiffs status, I liberally construe this action as a complaint pursuant to 28 U.S.C. § 1983, Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (per curiam); Soto v. Walker, 44 F.3d 169, 173 (2d Cir. 1995) *(pro se* papers should be interpreted "to raise the strongest arguments that they suggest"), because he alleges that defendants violated his constitutional rights. Plaintiff seeks one billion dollars in monetary damages and injunctive relief. I hereby dismiss plaintiff's complaint for the following reasons.

As an initial matter, the Court advises plaintiff that in order to sustain a claim for relief under 42 U.S.C. § 1983 against municipal defendants, such as the City of New York, plaintiff must show the existence of an officially adopted policy or custom that caused injury and a causal connection between that policy or custom and the deprivation of a constitutional right. Bd. of County Comm'rs of Bryan County, Okl. v. Brown, 520 U.S. 397 (1997) (citing Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978)); Sarus v. Rotundo, 831 F.2d 397, 400 (2d Cir. 1987). Even when

liberally construed, Haines, 404 U.S. at 520-21, the present complaint cannot reasonably be interpreted as alleging facts sufficient to demonstrate that plaintiff's injury was caused by any policy or custom of this municipal defendant. Therefore, the complaint against the City of New York must be dismissed. 28 U.S.C. § 1915 (e)(2)(B)(ii).

Furthermore, plaintiff's action before the Court is untimely and therefore must be dismissed. Claims under § 1983 must be commenced within three years of the alleged violation. See Owens v. Okure, 488 U.S. 235 (1989); Wilson v. Garcia, 471 U.S. 261 (1985); N.Y. C.P.L.R.. § 214 (McKinney 2005). The facts clearly show that plaintiff's claims are over three years old. The incidents upon which plaintiff's complaint is based occurred between November 25, 1985 and June 2001. Plaintiff's complaint was received by the Court's *Pro Se* Office on August 17, 2004. Therefore, plaintiff's complaint was filed outside the applicable three-year limitations period. Pino v. Ryan, 49 F.3d 51, 53 (2d Cir. 1995) (citation omitted) (a defense that appears on the face of the complaint may be the basis for a dismissal under 28 U.S.C. § 1915(d)). See also Baker v. Cuomo, 58 F.3d 814, 818-19 (2d Cir. 1995) *(asua sponte* dismissal is "appropriate if it appears from the face of the complaint that the action is barred ... by the expiration of the statute of limitations"). A dismissal under 28 U.S.C. § 1915(e) based on the statute of limitations is especially appropriate where, as in this case, the acts complained of occurred three to nine years before the filing of the complaint-well outside the applicable three year limitation period. Pino, 49 F.3d at 54 (dismissing claim with a three year statute of limitations period where injuries occurred five years prior to filing of the complaint). Therefore, plaintiff's complaint is dismissed as it was filed outside the applicable three-year limitations period. 28 U.S.C. § 1915(e)(2)(B)(ii).

To the extent plaintiff seeks to assert a claim regarding an assault which he alleges occurred in Columbus, Georgia,

the Southern District of New York is not the appropriate court with which to bring this claim. The relevant venue provision for a§ 1983 action is found at 28 U.S.C. § 1391(b), which provides that "[a] civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided bylaw, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, [or] (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred ...." If an action is filed with the wrong district court, a court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). This provision vests broad discretion with the court to decline to transfer a case where it would not be in the interest of justice to effect such a transfer. Because of the conclusory nature of plaintiff's present allegations and the fact that his claim is untimely, I decline to transfer the allegations regarding the assault which occurred in Columbus, Georgia. Thus, plaintiff's claim of assault is dismissed.

Inasmuch as plaintiff seeks to assert a claim that defendants have unlawfully denied his requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, plaintiff is advised that an applicant seeking documents under FOIA is required to exhaust his administrative remedies by completing the administrative appeal process before seeking judicial review. See Sloman v. United States Dep't of Justice, 832 F. Supp. 63, 65-66 (S.DN.Y. 1993); see also Sterling Drug Inc., v. Harris, 488 F. Supp. 1019, 1023 (S.D.N.Y. 1980). The FOIA establishes a relatively simple administrative process. Section 552(a)(6)(A)(i) provides that an agency shall "determine within ten days. .. after the receipt of [a FOIA] request whether to comply. .. and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right. .. to appeal to the head of the

agency any adverse determination." 5 U.S.C. § 552(a)(6)(A)(i). Upon the denial of such request, an appeal to the Office of Information and Privacy, United States Department of Justice may be filed within sixty (60) days of the date of the letter denying the request. 28 C.F.R. § 16.9 (2005). If the person making such request wishes to seek review by a court of any adverse determination, the requester must first appeal it under this section. Id. The district court of the United States in the district in which the complainant resides or has his principal place of business, or in which the agency records are situated, or in District of Colombia, has jurisdiction to enjoin the agency from withholding agency records improperly held from the complainant. 5 U.S.C. § 552(4)(B). In the instant action, plaintiff fails to allege that he has exhausted his administrative remedies. 28 C.F.R. § 16.9(a) (2005): Morpurgo v. Board of Higher Education in City of New York, 423 F. Supp. 704, 715 n.26 (S.D.N.Y. 1976). Therefore, plaintiff's complaint must be dismissed. 28 C.F.R. § 16.9(c) (2005).

With respect to plaintiff's claims which appear to have occurred within the three-year statute of limitations, plaintiff is advised that the subject matter jurisdiction of the federal district courts is limited and is set forth generally in 28 U.S.C. §§ 1331 and 1332. Under these statutes, federal jurisdiction is available only when a"federal question" is presented (§ 1331) or plaintiff and defendant are of diverse citizenships and the amount in question exceeds $75,000 (§ 1332). "{I]t is common ground that in our federal system of limited jurisdiction any party or the court *sua sponte,* at any stage of the proceedings, may raise the question of whether the court has subject matter jurisdiction" United Food & Commercial Workers Union, Local 919, AFL-CIO v. CenterMark Properties Meriden Square, Inc., 30 F.3d 298, 301 (2d Cir. 1994) (quoting Manway Constr. Co. v. Housing Auth. of Hartford, 711 F.2d 501,503 (2d Cir. 1983)).

Moreover, "[w]here jurisdiction is lacking,... dismissal is mandatory."; see also Fed. R. Civ. P. 12(b)(1) and 12(h)(3).

Federal Question

Plaintiff's claims do not provide a basis for federal jurisdiction under 28 U.S.C. §1331. To invoke federal question jurisdiction, the plaintiff's claim(s) must arise "under the Constitution, laws, or treaties of the United States." 28 U.S.C. §1331. "Federal question jurisdiction may be properly invoked only if the plaintiff's complaint necessarily draws into question the interpretation or application of federal law." State of New York v. White, 528 F.2d 336, 338 (2d Cir. 1975). Where, as here, the plaintiff's constitutional claim appears to be nothing more than a state court claim "recloaked in constitutional garb," the constitutional claim is insufficient to confer jurisdiction. Anderson v. Bowen, 881 F.2d 1, 5 n.10 (2d Cir. 1989) (quoting Hagans v. Lavine, 415 U.S. 528, 53637 (1974)).

Diversity of Citizenship

Federal jurisdiction is also not available under 28 U.S.C. § 1332 because diversity of citizenship is not alleged to exist between the plaintiff and defendant and despite plaintiff's allegations, it does not appear that the amount in controversy exceeds $75,000. Cresswell v. Sullivan & Cromwell, 922 F.2d 60, 68 (2d Cir. 1990) ("It is well established that for a case to come within this statute there must be complete diversity and that diversity is not complete if any plaintiff is a citizen of the same state as any defendant.") (citations omitted); Lupo v. Human Affairs Int'l, Inc. 28 F.3d 269, 273 (2d Cir. 1994) ("The Supreme Court has held that the party asserting diversity jurisdiction in federal court has the burden of establishing the existence of the jurisdictional amount in controversy.").

In the instant action, plaintiff, a resident of Bronx, New York, seeks to bring a complaint against the City of New York. Therefore, it is clear that diversity does not exist. Moreover, although plaintiff seeks total damages in the

amount of one billion dollars, the Court finds that plaintiff has not alleged sufficient facts to show that the amount in controversy actually exceeds $75,000.00.

Conclusion

Thus, according this *pro se* complaint the close and sympathetic reading to which it is entitled, Haines, 404 U.S. at 520-21, it reveals no basis for the exercise of subject matter jurisdiction over the underlying suit. FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990) (the Court has an independent duty to examine the basis for jurisdiction); Fed. R. Civ. P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."). Whereas plaintiff's allegations against defendant fail to state a cognizable claim in federal court, I offer no opinion as to whether plaintiff may have a cognizable claim in the state courts.

Although this Court would generally permit amendment of a fee-paid complaint to cure any defects before dismissing the case *sua sponte*, Hughes v. Albany, 76 F.3d 53 (2d Cir. 1996), there is no need to do so here as plaintiff presents no arguably meritorious issue. See Mallard v. United States Dist. Court, 490 U.S. 296, 307-08 (1989) ("Section 1915 ... authorizes courts to dismiss a `frivolous or malicious' action, but there is little doubt they would have power to do so even in the absence of this statutory provision."); Fitzgerald v. First East Seventh Street Tenants Corp., No. 99 Civ. 6051 (JFK), 1999 WL 675996, at *1 (S.D.N.Y. Aug. 31, 1999) (citations omitted) ("A district court in the Second Circuit may *sua sponte* dismiss a complaint even if the plaintiff has paid the filing fee"); Pourzandvalcil v. Humphry, No. 94-CV-1594, 1995 WL 316935, at *8 (N.D.N.Y. May 23, 1995) ("The law in this circuit is that a district court may *sua sponte* dismiss a frivolous complaint even if the plaintiff has paid the filing fee.") (citing Tyler v. Carter, 151 F.R.D. 537, 540 (S.D.N.Y. 1993), aff'd, 41 F.3d 1500 (2d Cir. 1994)); Platsky

v. Armand, No. CV-93-5154, 1994 WL 681415, at *7 (E.D.N.Y. Feb. 8, 1994) (although *pro se* litigants must be afforded special solicitude, court may dismiss "claims describing fantastic or delusional scenarios"); Parris v. Kelly, No. 93 Civ. 7391 (RWS), 1993 WL 497979 (S.D.N.Y. Nov. 30, 1993) (Fed. R. Civ. P. 12(b)(6) authorizes a district court to dismiss *sua sponte* a fee-paid complaint that is fantastic or delusional) (citing Tyler, 151 F.R.D. at 540); cf. Pillay v. Immigration & Naturalization Serv., 45 F.3d 14, 17 (2d Cir. 1995) (per curiam) (discussing appellate court's inherent authority to dismiss meritless and/or frivolous fee-paid cases).

Accordingly, plaintiff's complaint is hereby **DISMISSED** because it fails to allege facts establishing subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1) and 12(h)(3) and thus fails to state a claim on which relief may be granted. 28 U.S.C. § 1915 (e)(2)(B)(ii). Plaintiffs request for injunctive relief is **DENIED** as moot.

Although plaintiff paid the requisite filing fee to bring this action, I certify pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED: "s/ Michael B. Mukasey"
Dated: FEB X 4 2005 MICHAEL B. MUKASEY
New York. New York Chief Judge

APPENDIX O: NOTICE OF APPEAL RECEIPT

PRO SE OFFICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE
500 PEARL STREET, Roots 230
NEW YORK, NEW YORK 10007
J. **MICHAEL McMAHON**
CLERK OF COURT

Date: APR 2 0 2005

Re: Reynolds, J. v. City of New York, et al.,
05 Civ. 1815 (MBM)

Dear Litigant:

Please be advised that this office received your notice of appeal on MAR 14 2005.

Your appeal will now be docketed in the District Court, forwarded to the Orders and Appeals Clerk and then transmitted to the Court of Appeals. If you have any questions about this procedure, you may contact this office by letter or by telephone during our normal business hours, 8:30 a.m. - 5:00 p.m., Monday - Friday (except federal holidays). Please note that we cannot accept collect calls.

Sincerely,
"s/ illegible"
Pro Se Clerk
(212) 805-0175

enclosure(s)
rev. 7/03

APPENDIX P: APPEAL SCHEDULING ORDER #1

Handwritten "Reynolds"
w/ initials "JM"

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

Roseann B. MacKechnie

CLERK Stamped "UNITED STATES COURT OF APPEALS SECOND CIRCUIT FILED MAY 16 2006 Roseann B. MacKechnie, CLERK"

Date: 5/16/06
Docket Number: 05-3609-cv
Short Title: Reynolds v. City of New York
DC Docket Number: 05-cv-1815
DC: SDNY (NEW YORK CITY')
DC Judge: Honorable Michael Mukasey
PRO SE APPEAL SCHEDULING ORDER #1
MAKE ALL TELEPHONE INQUIRES TO (212) 857 - 8637
Noting that *appellant* has filed a notice of appeal, *pro se:*
IT IS HEREBY ORDERED that the district court shall be responsible for filing the record on appeal on or before N/A.
IT IS FURTHER ORDERED that appellant's brief and appendix, which shall be filed in typewritten form, shall be served and filed on or before **06/15/2006.** If appellant's brief does not exceed ten (10) pages, it shall be filed in memorandum form.
IT IS FURTHER ORDERED that the appellee's brief shall be served and filed on or before **07/17/2006.** If appellee's brief does not exceed I O pages, it shall be filed in memorandum form.
IT IS FURTHER ORDERED that 10 copies of each brief, memorandum or appendix shall be filed with the Clerk.

IT IS FURTHER ORDERED that the appellee may, without further order of the court, file 10 copies of an appendix to its brief, or 10 copies of attached to its memorandum.
IT IS FURTHER ORDERED that the argument of the appeal may be heard as early as the week of **08/28/2006**. All counsel should immediately advise the Clerk by letter of the dates thereafter that they are unavailable for oral argument. The time and place of oral argument may be separately noticed by the Clerk to counsel.
IT IS FURTHER ORDERED that in the event of default by appellant in timely filing the record on appeal, or the appellant's brief and appendix, or memorandum and appendix, or upon default by appellant regarding any other provision of this order, the appeal may be dismissed forthwith without [sic]
Re: 05-3609-cv Reynolds v. City of New York
IT IS FURTHER ORDERED that if the appellee fails to file a brief or memorandum within the time directed by this order, the appellee may be subject to such sanctions as the court may deem appropriate.

"s/ Janine Moreno"
Janine Moreno
Dated: 5/16/2006 Deputy Clerk, USCA

APPENDIX Q: MOTION 30-DAY EXTENSION TO FILE BRIEF

Handwritten/ "Reynolds JM"

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007
Telephone: 212-857-5500

MOTION INFORMATION STATEMENT

Docket Number(s): 05-3609-cv
Motion for: extension
Caption (use short title)
Reynolds
v.
City of New York
Set forth below precise statement of relief sought:
Plaintiff/ Appelant seek[s] a 30-day extension of time to file a brief. Stamped "UNITED STATES COURT OF APPEALS SECOND CIRCUIT FILED JUN 13 2006 ROSEANN B. MacKechnie, Clerk"
Moving Party: _____Opposing Party: _____.
Appellant/Petinioner
Moving Attorney: _____Opposing Attorney: _____.
Court-Judge/Agency appealed from: _____.
.Has consent of opposing counsel been sought? No.
Is oral argument requested? Yes.
Has argument date of appeal been set? No.
Signature of Moving Attorney:
"s/ James Reynolds" *ProSe* **Date:** June 13, 2006.
Has service been effected? Yes.
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED the motion is **GRANTED.**
Appellant's Brief and Appendix due on 07/24/06.
Appellee's brief due on 08/22/06. Ready Week 10/03/06.

Stamped "UNITED STATES COURT OF APPEALS
SECOND CIRCUITFILED JUN 13 2006 "
FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk
Date: 06/23/06
ROSEANN B. MacKechnie, Clerk

By: "s/ Janine Moreno"
Janine Moreno.
Deputy Clerk, U.S.C.A.

Form T-1080 (Revised 12/12/O1)

APPENDIX R: APPEAL SCHEDULING ORDER #2

Handwritten/ "Reynolds"

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

Stamped "UNITED STATES COURT OF APPEALS SECOND CIRCUIT FILED JUN 23 2006 Roseann B. MacKechnie, CLERK"

Roseann B. MacKechnie
CLERK
Date: 6/23/06
Docket Number: 05-3609-cv
Short Title: Reynolds v. City of New York
DC Docket Number: 05-cv-1815
DC: SDNY (NEW YORK CITY'
DC Judge: Honorable Michael Mukasev

PRO SE APPEAL SCHEDULING ORDER #2
MAKE ALL TELEPHONE INQUIRES TO (212) 857 - 8637
Noting that *appellant* has filed a notice of appeal, *pro se:*
IT IS HEREBY ORDERED that the district court shall be responsible for filing the record on appeal on or before N/A.
IT IS FURTHER ORDERED that appellant's brief and appendix, which shall be filed in typewritten form, shall be served and filed on or before **07/24/2006.** If appellant's brief does not exceed ten (10) pages, it shall be filed in memorandum form.
IT IS FURTHER ORDERED that the appellee's brief shall be served and filed on or before **08/22/2006.** If appellee's brief does not exceed 10 pages, it shall be filed in memorandum form.
IT IS FURTHER ORDERED that 10 copies of each brief, memorandum or appendix shall be filed with the Clerk.

IT IS FURTHER ORDERED that the appellee may, without further order of the court, file 10 copies of an appendix to its brief, or 10 copies of attached to its memorandum.
IT IS FURTHER ORDERED that the argument of the appeal may be heard as early as the week of **10/03/2006.** All counsel should immediately advise the Clerk by letter of the dates thereafter that they are unavailable for oral argument. The time and place of oral argument may be separately noticed by the Clerk to counsel.
IT IS FURTHER ORDERED that in the event of default by appellant in timely filing the record on appeal, or the appellant's brief and appendix, or memorandum and appendix, or upon default by appellant regarding any other provision of this order, the appeal may be dismissed forthwith without
Re: 05-3609-cv Reynolds v. City of New York
IT IS FURTHER ORDERED that if the appellee fails to file a brief or memorandum within the time directed by this order, the appellee may be subject to such sanctions as the court may deem appropriate.

By: "s/ Janine Moreno"
Janine Moreno
Deputy Clerk, USCA

Dated: 6/23/2006

APPENDIX S: DEFENDANT'S NOTICE OF INTENT NOT TO FILE A BRIEF

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601
MICHAEL A. CARDOZO
Corporation Counsel
(212) 788-1067

August 15, 2006

United States Court of Appeals
For the Second Circuit
40 Foley Square
New York, New York 10007

Re: James J. Reynolds v. City of New York
O5-3609-CV

To Whom It May Concern:

Please be advised that the named defendant City of New York has never appeared in this matter and, accordingly, will not be filing an appellate brief on the appeal.

Sincerely yours,

"s/ Larry Sonnenshein"
LARRY SONNENSHEIN
Assistant Corporation Counsel
Appeals Division

cc: JAMES J. REYNOLDS
Pro Se Appellant
James J. Reynolds
Pro Se
820 Edison Ave.
Bronx, NY 10465 Tel: (718) 829-3817

APPENDIX T: NOTICE OF HEARING DATE

Date: 11/6/06
Docket Number: 05-3609-cv
Short Title: Reynolds v. City of New York
DC Docket Number: 05-cv-1815
DC: SDNY (NEW YORK CITY')

DC Judge: Honorable Michael Mukasev

NOTICE OF HEARING DATE
Date of Hearing: Thursday, January 11, 2006
Time Allotted for Oral Argument: Reynolds (5 mins)
NYC (On Submission)

The above referenced appeal is scheduled for oral argument on the day indicated in the **Ceremonial Courtroom (9th Floor)** , Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Manhattan, New York City.
Court convenes promptly at 10:00 a.m. Counsel and non-incarcerated pro se litigants must be present for argument unless earlier excused. Motions to adjourn argument must be promptly made and will be granted for grave reason only.
Counsel and non-incarcerated pro se litigants presenting oral argument must register with the courtroom deputy no later than 9:30 a.m., either by appearance in the courtroom or by phone from the VideoArgument Center, whichever applies.
Counsel and non-incarcerated pro se litigants may seek the Court's permission to waive oral argument by submitting a letter request to the Office of Clerk (attention Calendar Deputy) not later than five days before the hearing week.
Counsel and non-incarcerated pro se litigants **whose panel is sitting in the Ceremonial Courtroom** may elect to present oral argument from any of the Second Circuit Video-Argument Centers by notifying the Calendar Deputy in writing AS SOON AS POSSIBLE after receipt of this notice. A form is attached for your convenience. A notice regarding the Center is enclosed, and counsel are encouraged to call the Calendar Deputy for further details.
Report all settlements to the Calendar Deputy as soon as effected. Ordinarily, and subject to the ruling of the presiding judge, motions or stipulations to withdraw with prejudice will be granted without appearance by counsel,

but motions or stipulations to withdraw without prejudice filed within three business days of the argument will be considered at the time of argument, with counsel present and prepared to argue the merits.

ROSEANN B. MACKECHNIE, Clerk

Complete Items below and return copy of entire form to the Clerk's Office

Name of the Attorney /(Pro Se circled) Presenting argument:
James Reynolds
Firm Name (IF APPLICABLE):
Current Telephone Number. (718) 829-3817
The above named Attorney Represents:
(S(j APPELLANT-PETITIONER ( ) INTERVENOR
( ) APPELLEE-RESPONDENT ( ) AMICUS CURIAE
Date: 12/22/06 Signature: James Reynolds
11/27/06
James Reynolds
820 Edison Ave
Bronx, NY 10465
Ph. (718) 829-3817
Pro Se

APPENDIX U: REQUEST FOR PERMISSION TO WAIVE ORAL ARGUMENT

Office of the Clerk
United States Court of Appeals
For the Second Circuit
ATTN: Calendar Deputy
United States Court House
Foley Square
New York, NY 10007

Appellant Request for Permission to Waive Oral Argument in *Reynolds v. City of New York, 05-3609-cv*

This Court has scheduled oral arguments in *Reynolds v. City of New York, 05-3609-cv* for 10:00 AM on Thursday, January 11, 2006, but I believe there was a typographical error and the date should be January 11, 2007. Assuming this is correct, since the Law Department of the City of New York has informed me it will not file an appellate brief and, presumably, will not be presenting an oral argument; it would appear that – since I presented what I consider to be a sufficient case in the appellate brief, and there will be no opposing argument – I could only undermine my efforts by presenting an oral argument. Therefore, I request this Court's permission to waive oral argument.

Sincerely yours,
"s/ James Reynolds"
James Reynolds
Pro Se Appellant

APPENDIX V: SUMMARY ORDER OF THE APPEALS COURT

(SDNY NYC)
05-cv-1815
Mukasey (trj)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 0.23 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." Unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/), the party citing the summary order must file and serve a copy of that summary order together with the paper in which the summary order is cited. If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 17th day of January, Two thousand seven.

PRESENT:

RALPH K. WINTER
JOSE A. CABRANES
Circuit Judges,

EDWARD R, KORMAN
Chief District Judge.[*]

STAMPED "UNITED STATES COURT OF APPEALS SECOND CIRCUIT FILED JAN 17 2007 THOMAS ASREEN, ACTING CLERK."

JAMES J. REYNOLDS,
Plaintiff Appellant,
-*v.*- No. 05-3609-cv
CITY OF NEW YORK,

Defendant-Appellee.

APPEARING FOR APPELLANT: James J. Reynolds, *pro se.*

APPEARING FOR APPELLEE: Larry A. Sonnenshein, Assistant Corporation Counsel, Corporation Counsel of the City of New York, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Michael B. Mukasey, *Chief Judge).*

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is **AFFIRMED.**

Plaintiff James J. Reynolds appeals the District Court's *sua sponte* dismissal of his *prose* complaint. Plaintiff's complaint made a number of factual allegations against defendant City of New York, and sought $1 billion in damages and preliminary injunctive relief against defendant, pursuant to 42 U.S.C. ~ 1983. The District Court dismissed

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[*] The Honorable Edward R Korman, of the United States District Court for the Eastern District of New York, sitting by designation.

plaintiff's complaint under the authority of 28 U.S.C. 1915(e)(2)(B)(ii). We assume the parties' familiarity with the facts, the issues on appeal and the procedural history.

Upon a review of the record, and substantially for the reasons set forth in Chief Judge Mukasey's careful and comprehensive Order of Dismissal dated February 4, 2005, we conclude that the District Court did not err in dismissing plaintiff's ~ 1983 complaint. We have considered all of plaintiff's arguments on appeal and find them to be without merit. Accordingly, we hereby AFFIRM the judgment of the District Court.

FOR THE COURT,
Thomas Asreen, Acting Clerk
By "s/ Lucille Carr"

APPENDIX W: DENIAL NOTICE OF PETITION FOR REHEARING *EN BANC*

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

Catherine O'Hagan Wolfe
CLERK

STAMPED **"UNITED STATES COURT OF APPEALS SECOND CIRCUIT FILED JUNE 12 2007 CATHERINE O'HAGAN WOLFE"**

Date:	June 11, 2007
Docket Number:	05-3609-cv
Short Title:	Reynolds v. City of New York
DC Docket Number:	05-cv-1815
DC:	SDNY (NEW YORK CITY)
DC Judge	Honorable Michael Mukasey

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 12th day of June two thousand seven.
Reynolds v. City of New York

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant James J. Reynolds. Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

For the Court,
Catherine O'Hagan Wolfe, Clerk
By: "s/ Tracy W. Young"
Motion Staff Attorney

APPENDIX X: DECLARATION PURSUANT TO 28 U.S.C. § 1746

UNITED STATES COURT
SOUTHERN DISTRICT OF NEW YORK

James J. Reynolds,	)	
Plaintiff,	)	
vs.	)	
The United States of America, and The City	)	06 Civ.
of New York,	)	0843
Defendants.	)	(KMW)
	)	(DCF)
	)	
	)	
	)	
	)	
	)	

DECLARATION OF
JAMES J. REYNOLDS

Pursuant to 28 U.S.C. § 1746 James J. Reynolds declares as follows:

1. I am the *pro se* plaintiff in this action.
2. On or about mid-August 1980, Christopher Dixon brought uninvited to my house John Doe, who Dixon told me – when exactly, I do not remember – had recently been released from a British prison in Northern Ireland for activities related to being a member of the Irish Republican Army (IRA). Before they came to my house, I did not know anything about this Irishman.
3. When I asked Christopher Dixon on or about July 14, 2000 if the purpose for him and Kevin Kennedy paying me a visit and asking me to go out drinking with them that evening was to entrap me, Dixon answered yes.

4. Since 1994, I have made at least three FOIA requests to the FBI, not counting those out of which this action arises. (Ex. A-1 – A-9)
5. The US Army Infantry Center (USAIC) at Fort Benning, GA, as might be reasonably expected, receives distinguished visitors from all over the world. These events are frequently covered in the local press. I was assigned to the USAIC protocol office between 1988 and 1990. (Ex. B) On or about April 1, 1990, while I was a project officer in the USAIC protocol office, I had the task of orchestrating the visit schedule to Fort Benning, GA by a class of students from the Inter-American Defense College (IADC), Fort Leslie McNair in Washington, DC. I was required to arrange for two FBI agents from Washington, DC to provide security for this group of officers who came from the militaries of the different Americas. On other much more high profile visits I never had to request FBI support because the Army's Criminal Investigation Division (CID) ordinarily handled security; so this was unusual. Throughout the Inter-American Defense College visit, it seemed as though the two FBI agents were mostly concerned with keeping an eye on me. This was especially the case at the outdoor social function held at the Officers' Club during which they appeared to pay especially close attention to me. Why, I do not know.
6. The FBI was not involved – to my knowledge – in providing security when I handled the visit of former United States Ambassador to the United Nations and then Atlanta Mayor Andrew Young, during or around the late-winter or early-spring of 1990.
7. To my knowledge, the FBI was not responsible for security when Zbigniew Brzezinski, national Security Adviser to President Jimmy Carter, visited Fort

Benning to speak at his son's graduation from Officer Candidate School (OCS), either.

8. Nor did the FBI, as far as I am aware, provide a *security detail for* Senator Sam Nunn, Chairman of the Senate Armed Services Committee, during his visit to Fort Benning in April or May of 1990.
9. Again, the FBI was not involved when I handled visits to Fort Benning during 1989 and 1990 by the Directors General of the Peruvian and Mexican national police, high ranking military officials from Brazil, Pakistan, the NATO countries, the Israeli Embassy in Washington, DC, Israel, Uganda, North Yemen and most of the Americas during their visits to the USAIC and what was then the US Army School of the Americas (USARSA).
10. Between May 1991 and May 1992, I was assigned to a battalion that, like all Army units in the Republic of Korea (ROK), fell under the United Nations Command. My battalion commander, according other battalion and brigade staff officers, previously worked with Oliver North (Iran-Contra) in the White House on counter-terrorism issues. (Ex. C) On or about December 6, 1991 I gave a sworn statement to the military police at Yongsan Army garrison in Seoul, ROK – where the headquarters for the United Nations Command and United States Forces Korea are – complaining about a foreign government's espionage activities.
11. On or about December 16, 1991, I came down with a respiratory infection and remained ill for about two weeks, during which time I was frequently coughing up large chunks – at least I considered them to be large chunks – of coagulated blood (scabs). The Physician's assistant told me during a December 18, 1991 visit that there was no treatment for the infection, so I would have to ride it out. (Ex. D)

12. On or about July 4, 1984, somebody who looked a lot like William Weld tried to start a fight with me while I was leaving Green Lakes State Park after watching a performance of a philharmonic orchestra.
13. At or about 1:30 P.M. on May 5, 2005 I visited the SSA field office at 1380 Parker Street, Bronx, NY in search of answers to the query I made in a letter dated April 21, 2005, which was stamped in the office that day. In response to that letter – before it was stamped – I received a booklet containing SSA's 2005 rules and two computer printouts with the suicide prevention hotline telephone number featured prominently. Mr. Parker, the security guard, gave me a number and a form, told me to fill out the form, take a seat and wait for my number to be called. At about 2:20, my number was called and I spoke to a woman at the counter who was unable to answer the questions in the letter, which I brought with me, so I asked to speak to her supervisor. The supervisor, who told me her name was Ms. Taylor, was unable to answer the questions in the letter dated April 21, 2005, either. Instead she stamped my previously delivered, returned and now hand-carried letter with the date of May 5, 2005. (Complaint Exhibit C-5)
14. I was in full time attendance at postsecondary school from September 1981 until August 1985.
15. To my knowledge, my brother William Reynolds was never my legal guardian. I am certain he never exercised *de facto* guardian authority over me, any paperwork at the SSA notwithstanding. My uncle Michael V. Reynolds was my legal guardian after my mother died, as I remember things.
16. On or about September 19, 2005 I called somebody who I understood to be Mr. Brian Wright at the Department of Education (DOE), who had been handling my DOE inquiry. I explained who I was

and asked for any written findings from my case. (Ex. E) My recollection is that he said he forwarded the written report/findings (or whatever they are called) someplace and would need his boss' permission to get me a copy of it/them. I have not heard from the DOE since.

17. On or about February 27, 1997, I composed a letter using Microsoft Word, e-mailed the letter to the Chairman of the Senate Intelligence Committee, printed it out and saved it. (Ex. F)

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 28th day of September, 2006

By: "s/ James Reynolds"

Pro Se
820 Edison Ave.
Bronx, NY 10465
James J. Reynolds

APPENDIX Y: NATIONAL ARCHIVES FOIA REQUEST

Schwartz, Matthew (USANYS)
From: James Reynolds [jim180@earthlink.net]
Sent: Saturday, March 25, 2006 9:02 PM
To: specialaccess_FOIA
Subject: RE: Independent Counsel Starr/Ray records
Dear Mr. Paynter,

The purpose of the initial request was to see if NAPA has information that can ascertain whether or not certain retrospective and continuing indicators are valid. Please let me know the FoIA/PA appeal process. The assumption is that because you probably are permitted (I am not an attorney) legally to evade answering my request, you will. Therefore, this query is analogous to going through the motions. The idea is to get past this and the administrative appeal in order to get into the federal courts as quickly as possible where laws against perjury are applicable.

I realize that it must seem like I am a crackpot, however there are reasons for my request. Granted what I will relay may very well be a series of coincidences, nevertheless, it seems worthwhile to pursue the inquiry. On or about Friday 21 February 1997 during the early evening I sent an e-mail to the chairman of the Senate Intelligence Committee recommending that the committee reject the nomination of Anthony Lake to be the Director of Central Intelligence. The time where I was [was] 12 hours (I believe) ahead of east coast time in the US. When I awoke the next day I read in the paper that Ken Starr had reversed his decision to resign as the Whitewater Independent Counsel. I also noticed on a visit that day to Yongsan that the HQ's for US Forces Korea had concrete barriers surrounding it that, if my memory serves me correctly, the person whom I was visiting said had been erected that day. Then, on Sunday evening, when I was returning to Camp Stanley in a taxi, the driver suddenly pulled over on a remote road between Seoul and Oijungbu

and got out of the vehicle and ran. There was then a flash and a plume of smoke, which I interpreted as either a dud incendiary/explosive device designed to hurt me or perhaps just a warning.[23]

In the following weeks there was a stream of high-level Defense Department and Department of the Army officials, congressional delegations and inspection teams making short-notice visits to bases throughout Korea (including my unit's). Additionally, many of those whom I worked with were suddenly taking short-notice temporary duty trips and emergency leave. The entire atmosphere was surreal. Then Anthony Lake withdrew his nomination. There have also been many other weird occurrences since then, and there has been a sense that somehow they were related to that e-mail.

Perhaps this might facilitate locating information pertaining to me in the files. I understand there were a number of references to "John Does"mentioned in the various documents produced by the investigators in the Whitewater Independent Counsel's office. Who knows, maybe 50 U.S.C. pertains. Again, I realize these may be coincidences, however, there are enough of them to make me feel justified in pursuing the matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is

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[23] Though not included original in this FOIA request to NARA, there were other "coincidences," too. Following my e-mail to the Chairman of the Senate Intelligence Committee, I read press accounts of nearly one-hundred people with ties to different foreign countries fleeing the United States; and when I phoned my brother, William Reynolds, from Korea shortly thereafter, he told me he had been arrested in the Bronx on what to me seemed like bogus charges, having to do with traffic summonses that, as I remember my brother telling me, his childhood friend who was a police officer at the time, John Hudek, told my brother he had previously resolved and would not have to worry about. Again, these could all be coincidences, but there are a lot of them.

punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than $10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i) (3) by a fine of not more than $5,000.
Sincerely, James Reynolds
[Original Message]
From: specialaccess_FOIA <specialaccess FOIA@nara.gov>
To: <jim180Qearthlink.net>
Date: 12/22/2005 9:49:19 AM
Subject: Independent Counsel Starr/Ray records
DATE SUBMITTED:
Tuesday, 11/8/2005 at 4:03 am EST
MESSAGE TOPIC:
Other - my topic is not listed
MESSAGE TEXT:
James John Reynolds
820 Edison Ave
Bronx, NY 10465
(718) 829-3817
SSAN 104-52-9072
8 November 2005
Special Access and FOIA Staff
National Archives and Records Administration NWCTF-Room 6350
8601 Adelphi Road
College Park, MD 20740
Telephone: (301) 837-3190
FAX: (301) 837-1864
Dear FOIA Officer:
This is a request under the Freedom of Information/Privacy Act.
I request that a copy of the following documents [or documents containing the following information] be provided to me: any and all materials pertaining to me that may have

been collected or created by the office of independent counsel Kenneth Starr and/or Robert Ray during the Whitewater Investigation. I would be especially interested the results of any searches of my property that may have occurred in Texas, Tennessee, Missouri, New York or anywhere at any time during the investigation.

In order to help to determine my status to assess fees, you should know that I am an individual seeking information for personal use and not for a commercial use.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than $10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i) (3) by a fine of not more than $5,000.

Thank you for your consideration of this request.

Sincerely,
James John Reynolds
820 Edison Ave
Bronx, NY 10465
CUSTOMER'S NAME:
James Reynolds
Mr. Reynolds:

I checked databases of the records of the Washington, DC and Little Rock offices of the Independent Counsel and did not find your name. When we get access to additional

electronic records of the IC we will check for your name again.

If there are any other names that you would like us to check, please e-mail me.

David Paynter
CUSTOMER'S EMAIL ADDRESS:
jim180@earthlink.net
CUSTOMER'S MAILING ADDRESS:
820 Edison Ave
Bronx, NY 10465
United States
PHONE: (718) 829-3817

APPENDIX Z: EMAIL TO THE CHAIRMAN OF THE SENATE INTELLIGENCE COMMITTEE

James J. Reynolds
SSAN 104-52-9072
HHC, AVN BDE, 2ID
Unit # 15435
APO AP 96257-0481

Senator Richard Shelby
110 Hart Senate Office Building
United States Senate
Washington D.C. 20510-0103

I am writing as a private citizen to recommend you disapprove the niomination[sic] of Anthony Lake to be the Director of Central Intelligence, since you are the chairman of the United States Senate Intelligence Committee. I do not know the man, but he gives me bad vibes. My hunch is that he would compromise the professionalism of that agency, and use it to systematically destroy the individual liberties of loyal citizens for political, as opposed to national security reasons. What concerns me is he may use the same criteria to call someone an extremist as a political hack does. For instance, if somebody overseas expressed publicly that it might be a good idea for the federal government to curb the growth in medicare funding for the fiscal well being of the nation, he may label that person a right wing extremist. With the same ease that a political operative launches a 30 second sound bite campaign, he looks like the type to launch a systematic and wholesale campaign to destroy that person's constitutionally protected liberties. In short, he strikes me as the type to equate legitimate political dissent with criminality or disloyalty to our great nation. Such a man has no business being the Director of Central Intelligence.

Very Respectfully Yours
James J. Reynolds

APPENDIX AA: DEPARTMENT OF VETERANS AFFAIRS DEBT NOTICE

Department of Veterans Affairs

Debt Management Center
Bishop Henry Whipple Federal Building
P.O. Box 11930
St. Paul MN 55111-0930

APRIL 10, 2004

E-Mail Address: dmc.ops@vba.va.gov
File Number: 104529072

JAMES J REYNOLDS
820 EDISON AVE
BRONX NY 10465

Payee Number: 00
Person Entitled: JJREYN
Deduction Code: 59

The Department of Veterans Affairs recently sent you a letter explaining that your entitlement to Education *benefits* had changed. As a result, you were paid $ 1.186.00 more than you were entitled to receive.

WHAT ARE YOUR OPTIONS?

You can pay the debt in full, by check or money order. Payment instructions are on the back of this letter. We also accept VISA, MasterCard, American Express, Discover, and Western Union "Quick Collect". Please call our toll-free number for more information.

If you cannot make payment in full, we will work with you to establish a monthly payment schedule to clear the debt within a reasonable time frame.

WHAT ARE YOUR RIGHTS?

You have the right to dispute the debt and the right to request waiver. If you request waiver, you also have the right to request an oral hearing. **Information regarding these options is on the enclosed document entitled, Notice of Rights and Obligations. Read it carefully.**

WHERE DO YOU CALL IF YOU HAVE QUESTIONS?

You can contact this office by calling toll-free, 1-800-827-0648. Our office hours are 7:30 AM to 4:00 PM Central Standard Time. Your call may be monitored t ensure quality information.

HOW CAN YOU PAY THE DEBT?

Make your check or money order payable to the U. S. Department of Veterans Affairs.

Write your VA file number or social security number on your payment to ensure proper credit.

Include the remittance slip from the front of this letter with your payment and mail it in the enclosed envelope.

Please be advised that a waiver cannot be granted if we determine fraud, misrepresentation, or bad faith on your part in connection with the change in your entitlement that caused the debt. If you request a waiver and want an oral hearing before a decision is rendered, please tell us when you submit your waiver request.

If you become entitled to VA Benefits in the future and a debt still exists, those benefits will be withheld and applied to the debt balance in lieu of any payment agreement.

Chief, Operations Division

Enclosures

APPENDIX BB: DEPARTMENT OF VETERANS AFFAIRS PAYMENT COMPLETED NOTICE

Department of
Veterans Affairs
MAY 07, 2004
P.O. BOX 4616
Buffalo, NY 14240-4616

In Reply Refer To: File Number:
JAMES J REYNOLDS 104-52-9072
820 EDISON AVE J J REYNO
BRONX NY10465

According to our records, Chapter 30 educational assistance indebtedness to the Department of Veterans Affairs has been reduced by $201.08. The balance of your debt, as of the date of this letter, is $0.00.

Finance Officer
ENCL: VA FORM 4107

VA FORM
JAN 1990 20-8992 .

APPENDIX CC: CUNY STUDENT LOAN APPROVAL NOTICE FOR FALL 2003

City University of New York
Office of Student Financial Assistance
January 15, 2004

ST
JAMES J REYNOLDS
820 EDISON AVENUE
BRONX, NY 10465

Dear James:

Your application for a Federal Direct Subsidized Loan and/or a Federal Direct Unsubsidized Loan for the 2003-2004 academic year has been certified for the amount listed below. Since you have already signed a MASTER PROMISSORY NOTE (MPN), you are NO longer required to sign a new note for this loan.

Information about this loan:

You will receive a Disclosure Notice verifying the certification information prior to the first disbursement of your loan. If you feel that you need additional funds, please contact the Financial Aid Office at the school you will be attending to discuss this with a member of the financial aid staff.

Loan Period: Subsidized 08/30/2003 to 05/28/2004
Unsubsidized 08/30/2003 to 05/28/2004

Loan Amount Certified: Subsidized Loan $8500
Unsubsidized Loan $7872

Anticipated Disbursement Date(s)
Subsidized Loan: 03/03/2004 and 03/03/2004
Unsubsidized Loan: 03/03/2004 and 03/03/2004

If you choose not to borrow at this time or wish to reduce the amount of your loan, please let your college know as soon as possible so that they can cancel or reduce your loan.

There are some instances when a student who has already signed a Master Promissory Note (MPN) will be

required to sign another note. If you receive an MPN in the mail, please complete the references, sign, and date the promissory note according to the instructions. Retain one copy for your own records and return the original promissory note to the Applicant Services Department at the Loan Origination Center:
U.S. Department of Education Loan Origination Center Applicant Services P.O. Box 5691 Montgomery, AL 36103-5691
THE COLLEGE WILL NOTIFY YOU WHEN YOUR LOAN FUNDS ARE AVAILABLE. If you have any questions about your Federal Direct Student Loan, please contact your school's Financial Aid Office.
Sincerely,
George Chin
University Director
Student Financial Assistance
Please read the back of this letter for additional information.
[Back of Letter]
Federal Direct Loan Information
Here is some additional information about your loan:
1. In order to calculate the amount of your specific disbursements, first subtract a net fee of 1% percent from the amount of the loan. Then divide the remaining amount by the number of disbursements listed on the front of this letter. Each disbursement will be equal.
2. Keep your Disclosure Notices for your records.
3. Report all address changes to the Financial Aid Office.
4. The Department of Education provides an Ombudsman for students to contact if they are having loan problems that cannot be resolved at their college or with the Direct Loan Servicer. You may contact the Ombudsman on the internet at

http:/lsfahclp.ed.gov or http://ombudsman.ed.gov , or you may call toll free at 1-877-557-2575. If you wish to contact the Ombudsman by mail you may do so at the following address:

U. S. Department of Education FSA Ombudsman 830 First Street, N.E Fourth Floor
Washington, DC 20202-5144
If you have any questions, feel free to contact the Financial Aid Office at your school.

APPENDIX DD: UNSUBSIDIZED LOAN REDUCTION NOTICE

Lehman College
THE CITY UNIVERSITY OF NEW YORK
250 Bedford Park Boulevard West
Bronx, New York 10468-1589

James Reynolds
820 Edison Avenue
Bronx, NY 10465

Office of Financial Aid
Phone 718.960.8545 Fax 718.960.8328
Email: aidlc@cunyvm.cuny.edu
Web site: www.lehman.cuny.edu

February 19, 2004
Dear Mr. Reynolds:

Be advised that the following changes have been made to your Federal Direct Loan: Unsubsidized Loan has been reduced to $5,997 Changes have been made to your loan due to a change in one or more of the following;

- change in your enrollment status;
- decrease in your cost of attendance;
- additional financial aid awards or tuition waivers;
- increase in your family contribution.

You must be attending classes and remain registered for at least six (6) credits to be eligible for the Federal Direct Loan, Please report any course withdrawals to avoid an over-payment,

If you would like a full explanation on your FDL reduction please call me at 718-960-8545 or come in to see me.
Sincerely,
"s/Eileen Pretzel-Morales"
Student Loan Coordinator
EPM/rlg

APPENDIX EE: STUDENT LOAN DISBURSAL SCHEDULE

Lehman College
Office of Financial Aid
THE CITY UNIVERSITY OF NEW YORK
250 Bedford Park Boulevard West Phone 718.960.8545
Bronx, New York 10468-1589 Fax 718.960.8328
Web site: wwwlehman.cuny.edu
Email:aidlc@cunvwm.cuny.edu

February 26, 2004

James J Reynolds
820 Edison Ave
Bronx, NY 10465

Dear James,
We are pleased to inform you that you have been awarded the financial aid listed below. You may pick up the check in Shuster room 081 as per the following schedule:

Date	Last name	Time
March 3	A- Z	9:15am - 4:30pm
		5:OOpm - 7:OOpm

YOU MUST PRESENT YOUR VALIDATED CUNY CARD ID

Financial Aid Program	Award Amount	Current Payment Amount
FDL SUB	$ 8,374.00	$ 6,794.00
FDL UNSUB	$ 5,909.00	$ 5,909.00

The difference between the award amount and current payment amount may be due to deductions for tuition and fees.

Please report any course withdrawals to the Financial Aid Office to avoid an over-payment. If you do not pick up the check by March 12, it will be returned. File your 2004-O5 FAFSA ASAP

Visit our web page at www.lehman.cuny.edu/financialaid for more information.
Sincerely,
"s/ David Martinez"
David Martinez
Director, Financial Aid

APPENDIX FF: CONSTITUTIONAL AND STATUTORY PROVISIONS

A. CONSTITUTIONAL PROVISIONS

U.S Const. Art. 1 § 10
No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

U.S Const. Art. III § 1
The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

U.S. Const. Amend. XIV § 1
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B. STATUTORY PROVISIONS

10 U.S.C. § 333. Interference with State and Federal law

[Insurrection is defined as a situation] in a State, [where] any … unlawful combination, or conspiracy
(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or
(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.
In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

18 U.S.C. § 113. Assaults within maritime and territorial jurisdiction
(a) Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows:

(2) Assault with intent to commit any felony, except murder or a felony under chapter 109A, by a fine under this title or imprisonment for not more than ten years, or both.

(4) Assault by striking, beating, or wounding, by a fine under this title or imprisonment for not more than six months, or both.

(5) Simple assault, by a fine under this title or imprisonment for not more than six months, or both, or if the victim of the assault is an individual who has not attained the age of 16 years, by fine under this title or imprisonment for not more than 1 year, or both.

18 U.S.C. § 175. Prohibitions with respect to biological weapons

(a) In General. Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States.
(c) Definition. For purposes of this section, the term "for use as a weapon" includes the development, production, transfer, acquisition, retention, or possession of any biological agent; toxin, or delivery system for other than prophylactic, protective, bona fide research, or other peaceful purposes.

18 U.S.C. § 229. Prohibited activities [with respect to chemical weapons]
(a) Unlawful Conduct. Except as provided in subsection (b), it shall be unlawful for any person knowingly

(1) to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any chemical weapon; or

(2) to assist or induce, in any way, any person to violate paragraph (1), or to attempt or conspire to violate paragraph (1).

(c) Jurisdiction.— Conduct prohibited by subsection (a) is within the jurisdiction of the United States if the prohibited conduct—

(1) takes place in the United States;

(2) takes place outside of the United States and is committed by a national of the United States;

(3) is committed against a national of the United States while the national is outside the United States; or

(4) is committed against any property that is owned, leased, or used by the United States or by any department or

agency of the United States, whether the property is within or outside the United States.

18 U.S.C. § 951. Agents of foreign governments

(a) Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Attorney General if required in subsection (b), shall be fined under this title or imprisoned not more than ten years, or both.

(b) The Attorney General shall promulgate rules and regulations establishing requirements for notification.

(c) The Attorney General shall, upon receipt, promptly transmit one copy of each notification statement filed under this section to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General to do so shall not be a bar to prosecution under this section.

(d) For purposes of this section, the term "agent of a foreign government" means an individual who agrees to operate within the United States subject to the direction or control of a foreign government or official, except that such term does not include:

(1) a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State;

(2) any officially and publicly acknowledged and sponsored official or representative of a foreign government;

(3) any officially and publicly acknowledged and sponsored member of the staff of, or employee of, an officer, official, or representative described in paragraph (1) or (2), who is not a United States citizen; or

(4) any person engaged in a legal commercial transaction.

(e) Notwithstanding paragraph (d)(4), any person engaged in a legal commercial transaction shall be considered to be an agent of a foreign government for purposes of this section if:

(1) such person agrees to operate within the United States subject to the direction or control of a foreign government or official; and

(2) such person—

(A) is an agent of Cuba or any other country that the President determines (and so reports to the Congress) poses a threat to the national security interest of the United States for purposes of this section, unless the Attorney General, after consultation with the Secretary of State, determines and so reports to the Congress that the national security or foreign policy interests of the United States require that the provisions of this section do not apply in specific circumstances to agents of such country; or

(B) has been convicted of, or has entered a plea of *nolo contendere* with respect to, any offense under section 792 through 799, 831, or 2381 of this title or under section 11 of the Export Administration Act of 1979, except that the provisions of this subsection shall not apply to a person described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of *nolo contendere*, as the case may be.

18 U.S.C. § 1512. Tampering with a witness, victim, or an informant

(a)

(1) Whoever kills or attempts to kill another person, with intent to—

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of

conditions of probation, parole, or release pending judicial proceedings; shall be punished as provided in paragraph (3).

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

(B) cause or induce any person to—

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(3) The punishment for an offense under this subsection is—

(A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112;

(B) in the case of—

(i) an attempt to murder; or

(ii) the use or attempted use of physical force against any person;

imprisonment for not more than 20 years; and

(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 10 years.

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(2) cause or induce any person to—

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation [1] supervised release,,[1] parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than ten years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation [1] supervised release,,[1] parole, or release pending judicial proceedings;

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section—

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

(1) that the official proceeding before a judge, court, magistrate judge, grand jury, or government agency is before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(h) There is extraterritorial Federal jurisdiction over an offense under this section.

(i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

18 U.S.C. § 1513. Retaliating against a witness, victim, or an informant

(a)

(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

(B) providing to a law enforcement officer any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation [1] supervised release,,[1] parole, or release pending judicial proceedings,

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation [1] supervised release,,[1] parole, or release pending judicial proceedings given by a person to a law enforcement officer; or attempts to do so, shall be fined

under this title or imprisoned not more than ten years, or both.
(d) There is extraterritorial Federal jurisdiction over an offense under this section.
(e) [2] Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.
(e) [2] Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

18 U.S.C. § 1701. Obstruction of mails generally

Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined under this title or imprisoned not more than six months, or both.

18 U.S.C. § 1702. Obstruction of correspondence

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C § 1961. Definitions

As used in this chapter—
(1) "racketeering activity" means
(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year;
(B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons),
(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;
(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;
(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;
(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;
(9) "documentary material" includes any book, paper, document, record, recording, or other material; and
(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States,

any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

18 U.S.C. § 2383. Rebellion or insurrection

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

18 U.S.C. § 2387. Activities affecting armed forces generally

(a) Whoever, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States:

(1) advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or

(2) distributes or attempts to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States—

Shall be fined under this title or imprisoned not more than ten years, or both, and shall be ineligible for employment by

the United States or any department or agency thereof, for the five years next following his conviction.
(b) For the purposes of this section, the term "military or naval forces of the United States" includes the Army of the United States, the Navy, Air Force, Marine Corps, Coast Guard, Navy Reserve, Marine Corps Reserve, and Coast Guard Reserve of the United States; and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel.

20 U.S.C. § 1087a. Program authority
(a) In general
There are hereby made available, in accordance with the provisions of this part, such sums as may be necessary to make loans to all eligible students (and the eligible parents of such students) in attendance at participating institutions of higher education selected by the Secretary, to enable such students to pursue their courses of study at such institutions during the period beginning July 1, 1994. Such loans shall be made by participating institutions, or consortia thereof, that have agreements with the Secretary to originate loans, or by alternative originators designated by the Secretary to make loans for students in attendance at participating institutions (and their parents).
(b) Designation
(1) Program
The program established under this part shall be referred to as the "William D. Ford Federal Direct Loan Program".
(2) Direct loans
Notwithstanding any other provision of this part, loans made to borrowers under this part that, except as otherwise specified in this part, have the same terms, conditions, and

benefits as loans made to borrowers under section 1078 of this title, shall be known as "Federal Direct Stafford/Ford Loans."

20 U.S.C. § 1091. Student eligibility
(a) In general
In order to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, a student must—

(1) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which such student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title, except as provided in subsections (b)(3) and (b)(4) of this section, and not be enrolled in an elementary or secondary school;

(2) if the student is presently enrolled at an institution, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with the provisions of subsection (c) of this section;

(3) not owe a refund on grants previously received at any institution under this subchapter and part C of subchapter I of chapter 34 of title 42, or be in default on any loan from a student loan fund at any institution provided for in part D of this subchapter, or a loan made, insured, or guaranteed by the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42 for attendance at any institution;

(4) file with the Secretary, as part of the original financial aid application process, a certification,,[1] which need not be notarized, but which shall include—

(A) a statement of educational purpose stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to

attendance or continued attendance at such institution; and

(B) such student's social security number, except that the provisions of this subparagraph shall not apply to a student from the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau; [2]

(5) be a citizen or national of the United States, a permanent resident of the United States, able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident,[3] a citizen of any one of the Freely Associated States.

(b) Eligibility for student loans

(1) In order to be eligible to receive any loan under this subchapter and part C of subchapter I of chapter 34 of title 42 (other than a loan under section 1078–2 or 1078–3 of this title) for any period of enrollment, a student who is not a graduate or professional student (as defined in regulations of the Secretary), and who is enrolled in a program at an institution which has a participation agreement with the Secretary to make awards under subpart 1 of part A of this subchapter, shall—

(2) In order to be eligible to receive any loan under section 1078–1 [4] of this title for any period of enrollment, a student shall—

(A) have received a determination of need for a loan under section 1078 (a)(2)(B) of this title;

(B) if determined to have need for a loan under section 1078 of this title, have applied for such a loan; and

(C) has applied for a loan under section 1078–8 of this title, if such student is eligible to apply for such a loan.

(3) A student who—

(A) is carrying at least one-half the normal full-time work load for the course of study that the student is pursuing, as determined by an eligible institution, and

(B) is enrolled in a course of study necessary for enrollment in a program leading to a degree or certificate,

shall be, notwithstanding paragraph (1) of subsection (a) of this section, eligible to apply for loans under part B or C of this subchapter. The eligibility described in this paragraph shall be restricted to one 12-month period.

(4) A student who—

(A) is carrying at least one-half the normal full-time work load for the course of study the student is pursuing, as determined by the institution, and

(B) is enrolled or accepted for enrollment in a program at an eligible institution necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State,

shall be, notwithstanding paragraph (1) of subsection (a) of this section, eligible to apply for loans under part B, C, or D of this subchapter or work-study assistance under part C of subchapter I of chapter 34 of title 42.

28 U.S.C. § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the

entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. § 1291. Final decisions of district courts
The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292 (c) and (d) and 1295 of this title.

28 U.S.C. § 1331. Federal question
The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.
28 U.S.C. § 1391. Venue generally
(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in

(1) a judicial district where any defendant resides, if all defendants reside in the same State,

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or

(3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1915 (e) (2) (B) (ii)
(e)

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(B) the action or appeal—

(ii) fails to state a claim on which relief may be granted.

38 U.S.C. § 3001. Purposes

The purposes of this chapter are—

(1) to provide a new educational assistance program to assist in the readjustment of members of the Armed Forces to civilian life after their separation from military service;

(2) to extend the benefits of a higher education to qualifying men and women who might not otherwise be able to afford such an education;

(3) to provide for vocational readjustment and to restore lost educational opportunities to those service men and women who served on active duty after June 30, 1985;

(4) to promote and assist the All-Volunteer Force program and the Total Force Concept of the Armed Forces by establishing a new program of educational assistance based upon service on active duty or a combination of service on active duty and in the Selected Reserve (including the National Guard) to aid in the recruitment and retention of highly qualified personnel for both the active and reserve components of the Armed Forces;

(5) to give special emphasis to providing educational assistance benefits to aid in the retention of personnel in the Armed Forces; and

(6) to enhance our Nation's competitiveness through the development of a more highly educated and productive work force.

38 U.S.C. § 3011. Basic educational assistance entitlement for service on active duty

(a) Except as provided in subsection (c) of this section, each individual—

(1) who—

(A) after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and—

(i) who (I) in the case of an individual whose obligated period of active duty is three years or more, serves at least three years of continuous active duty in the Armed Forces, or

(ii) who serves in the Armed Forces and is discharged or released from active duty.

38 U.S.C. § 3015. Amount of basic educational assistance

(a) The amount of payment of educational assistance under this chapter is subject to section 3032 of this title. Except as otherwise provided in this section, in the case of an individual entitled to an educational assistance allowance under this chapter whose obligated period of active duty on which such entitlement is based is three years, a basic educational assistance allowance under this subchapter shall be paid—

(1) for an approved program of education pursued on a full-time basis, at the monthly rate of—

(A) for months beginning on or after January 1, 2002, $800;

(B) for months occurring during fiscal year 2003, $900;

(C) for months occurring during fiscal year 2004, $985; and

(D) for months occurring during a subsequent fiscal year, the amount for months occurring during the previous fiscal year increased under subsection (h); or

(2) at an appropriately reduced rate, as determined under regulations which the Secretary shall prescribe, for an

approved program of education pursued on less than a full-time basis.

38 C.F.R. § 21.7136 Rates of payment of basic educational assistance.
The monthly rate of educational assistance payable to a veteran or servicemember depends in part upon the service requirements he or she met to establish eligibility for that educational assistance.
(b) Rates . (1) Except as elsewhere provided in this section or in §21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 2004, to a veteran whose service is described in paragraph (a) of this section, is the rate stated in the following table: [24]

Training	Monthly rate
Full time	$1004.00
3/4 time	753.00
1/2 time	502.00
Less than 1/2 but more than 1/4	502.00
1/4 time	251.00

38 U.S.C. § 3032. Limitations on educational assistance for certain individuals
(a) In the case of an individual entitled to educational assistance under this chapter who is pursuing a program of education—
(1) while on active duty; or
(2) on less than a half-time basis,
the amount of the monthly educational assistance allowance payable to such individual under this chapter is the amount determined under subsection (b) of this section.

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[24] The "training" column is the pertinent column, because it establishes how the categories of training break down at a less than full-time rate, which have not changed since the time in question.

(b) The amount of the educational assistance allowance payable to an individual described in subsection (a) of this section is the least of the following:

(1) the amount of the educational assistance allowance otherwise payable to such individual under this chapter,

(2) the established charges for tuition and fees that the educational institution involved requires similarly circumstanced non-veterans enrolled in the same program to pay, or

(3) the amount of the charges of the educational institution elected by the individual under section 3014 (b)(1) of this title.

38 U.S.C. § 3452. Definitions

For the purposes of this chapter and chapter 36 of this title—

(b) The term "program of education" means any curriculum or any combination of unit courses or subjects pursued at an educational institution which is generally accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. Such term also means any curriculum of unit courses or subjects pursued at an educational institution which fulfill requirements for the attainment of more than one predetermined and identified educational, professional, or vocational objective if all the objectives pursued are generally recognized as being reasonably related to a single career field.

(c) The term "educational institution" means any public or private elementary school, secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college ...

(g) The term "standard college degree" means an associate or higher degree awarded by

(1) an institution of higher learning that is accredited as a collegiate institution by a recognized regional or national accrediting agency; or

42 U.S.C. § 1983. Civil action for deprivation of rights
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

N.Y.C.P.L. § 214. Actions to be commenced within three years: for non-payment of money collected on execution; for penalty created by statute; to recover chattel; for injury to property; for personal injury; for malpractice other than medical, dental or podiatric malpractice; to annul a marriage on the ground of fraud. The following actions must be commenced within three years:

1. an action against a sheriff, constable or other officer for the non-payment of money collected upon an execution;

2. an action to recover upon a liability, penalty or forfeiture created or imposed by statute except as provided in sections 213 and 215;

3. an action to recover a chattel or damages for the taking or detaining of a chattel;

4. an action to recover damages for an injury to property except as provided in section 214-c;

5. an action to recover damages for a personal injury except as provided in sections 214-b, 214-c and 215.